DEFENDANT'S EXHIBIT No. 109.

Report of U. S. Tariff Commission entitled "Tariff Information Series No. 23, Census of Dyes and Coal-Tar Chemicals 1920."

(Not Printed)

DEFENDANT'S EXHIBIT No. 110.

Report of U. S. Tariff Commission entiled "Tariff Information, Series No. 26, Census of Dyes and other Synthetic Organic Chemicals 1921."

(Not Printed)

DEFENDANT'S EXHIBIT No. 111.

Report of U. S. Tariff Commission entitled "Tariff Information, Series No. 1922, Census of Dyes and Coal Tar Chemicals 1919."

(Not Printed)

DEFENDANT'S EXHIBIT No. 112.

Report of U. S. Tariff Commission entitled "Report on Dyes and Related Coal-Tar Chemicals, 1918, printed for use of the Committee on Ways and Means of the House of Representatives."

(Not Printed)

150249

DEFENDANT'S EXHIBIT No. 113.

Report of U. S. Tariff Commission entitled "Tariff Information Series No. 15, Costs of Production in the Dyes Industry, 1918 and 1919, details of costs for a selected list of dyes and intermediates."

(Not Printed)

DEFENDANT'S EXHIBIT No. 114.

Report of U. S. Tariff Commission, entitled "Tariff Information Series No. 11, Census of Dyes and Coal-Tar Chemicals, 1918."

(Not Printed)

DEFENDANT'S EXHIBIT No. 115.

Report of U. S. Tariff Commission entitled "Tariff Information Series No. 6, Census of Dyes and Coal-Tar Chemicals, 1917."

(Not Printed)

DEFENDANT'S EXHIBIT No. 116.

Publication of Department of Commerce, Bureau of Foreign and Domestic Commerce, entitled "Special Agents, Series No. 121, Artificial Dye Stuffs used in the United States, quantity and value of foreign imports and of domestic production during the fiscal year 1913-1914."

(Not Printed)

DEFENDANT'S EXHIBIT No. 117.

COMPARISON OF VALUE OF DYES, DOMESTIC AND IMPORTED CONTROLLED BY THE PATENTS OWNED BY THE CHEMICAL FOUNDATION, INCORPORATED, FOR THE YEARS 1919, 1920, 1921 and 1922 WITH THE TARIFF COMMISSION REPORTS OF TOTAL SALES DOMESTIC AND IMPORTED,

1919, 1920, 1921

Tariff Commission Report	Sales of Domestic Producers	1919	$67,598,855.00
		1920	95,613,749.00
		1921	39,283,956.00
			$202,496,560.00
The Chemical Foundation, Inc.	Income from Domestic Production by years	1919	$9,478.91
		1920	64,871.20
		1921	93,293.41
		1922	102,636.17
			$270,279.69

Based on average royalty of 4%, the approximate value is $6,756,992.00 or 3.33% of Total Domestic sales.

* * * * * * * * *

Tariff Commission Report	Value of Imports of Dyes by years	1919	$3,625,929.00
		1920	5,763,437.00
		1921	5,156,779.00
			$14,546,145.00
The Chemical Foundation, Inc.	Income from Imports by years	1919) 1920)	83,291.70
		1921	173,323.67
		1922	108,677.50
			365,292.87

Based on royalty of 10%—the value is $352,928.70 or 25.11% of total Import Sales.

* * * * * * * * *

Tariff Commission Report	Total Sales of Domestic and Imported Products for three years	Domestic	$202,496,560.00
		Imported	14,546,145.00
			$217,042,705.00

The Chemical Foundation, Inc.	Value of Sales of Domestic and Imported Products under The Chemical Foundation, Inc. patents for four years.	Domestic	$6,756,992.00
		Imported	3,652,928.70
			10,409,920.70

The Value of products sold for the four (4) years under The Chemical Foundation, Inc. patents represents 4.79% of total sales for three (3) years.

DEFENDANT'S EXHIBIT No. 118.

COMPARISON OF POUNDS OF DYES—DOMESTIC & IMPORTED CONTROLLED BY THE PATENTS OWNED BY THE CHEMICAL FOUNDATION, INCORPORATED, FOR THE YEARS 1919, 1920, 1921 & 1922 WITH THE TARIFF COMMISSION REPORTS OF TOTAL SALES DOMESTIC & IMPORTED 1919, 1920 & 1921

Tariff Commission Report	Domestic Production	1919	63,402,194 lbs.
		1920	88,263,776 "
		1921	47,513,762 "
			199,179,732 lbs.
The Chemical Foundation, Inc.	Produced under Chemical Foundation patents 2/10/19 to 12/31/22		3,273,405 lbs. or 1.64%
Tariff Commission Report	Imports of Dyes	1919	3,043,150 lbs.
		1920	3,402,582 "
		1921	3,914,036 "
			10,359,768 "
The Chemical Foundation, Inc.	Imports of Dyes Under Chemical Foundation, Inc. patents 2/10/19 to 12/31/22		1,346,834 lbs. or 13%

DEFENDANT'S EXHIBIT No. 119.

COPY

November 11, 1920.

G-37192
R-37698

F. M. Eugen Blass, Esq.,
209 Union Avenue,
Long Branch, New Jersey.

Dear Sir:—

In answer to your letter dated October 1, 1920 addressed to Mr. Francis P. Garvan, Alien Property Custodian, and previous correspondence on the subject of your application for letters patent of the United States No. 63231 and 63232, you are advised as follows:

Based upon the record of the Patent Office, that you were a resident at Mulheim-on-the-Rhine, Germany, your rights in these applications was demanded by the Alien Property Custodian under the terms of the Trading with the Enemy Act. By virtue of such demand the Alien Property Custodian conveyed such interest to the Chemical Foundation, Incorporated. Upon your showing that at the time of our demand you were a resident of the United States, we have secured from the Chemical Foundation, Incorporated, release and assignment conveying to you said applications, the effect of which would be to reinstate you in all of your rights thereunder as such rights existed at the time of our action. Sometime since Mr. Ramsay Hoguet sent to you a form of release for execution by you and stated that upon the delivery of such release, the assignment would be delivered to you. This office holds the assignment properly executed by the Chemical Foundation, Incorporated, and upon delivery of the release referred to will deliver to you the

assignment. You will see from the above that the office is ready to satisfy you as to all of your rights upon your compliance with the proper request of the Alien Property Custodian in the matter.

Very truly yours,

BUREAU OF TRUSTS.

(Sgd.) By CHAS. B. CALVERT.

CBC/GMS

DEFENDANT'S EXHIBIT No. 120.

Publication entitled "Temporary list of Patents and Copyrights transferred to The Chemical Foundation, Inc."

(Not Printed)

DEFENDANT'S EXHIBIT No. 121.

Publication entitled "Patents Transferred to The Chemical Foundation, Inc.," dated June, 1921.

(Not Printed)

DEFENDANT'S EXHIBIT No. 122.

Booklet entitled "Vat Dye Patents, Owned by The Chemical Foundation, Inc."

(Not Printed)

DEFENDANT'S EXHIBIT No. 123.

Booklet entitled "Drug and Medicinal Patents, owned by The Chemical Foundation, Inc."

(Not Printed)

DEFENDANT'S EXHIBIT No. 124.

Book entitled "Electro-Chemical and Electro-Metallurgical Patents owned by The Chemical Foundation, Inc."

(Not Printed)

DEFENDANT'S EXHIBIT No. 125.

Book entitled "Paper Patents owned by The Chemical Foundation, Inc."

(Not Printed)

DEFENDANT'S EXHIBIT No. 126.

May 23, 1922.

Hon. Thomas W. Miller,
Alien Property Custodian,
Washington, D. C.

Sir:

As you are no doubt aware, Section 10 of the Trading with the Enemy Act provides that suit to recover compensation for use and enjoyment under li-

censes granted by the Federal Trade Commission may be brought within one year after the end of the war, which date has been fixed as July 2, 1922.

The Chemical Foundation, Inc., as owner of various properties under conveyances from the Alien Property Custodian, is now preparing and will file before said date suits to recover such compensation from the licensees of said properties. After careful consideration of the provisions of the Trading with the Enemy Act, The Foundation has determined to make claim only for such compensation as has accrued since the respective dates of the conveyances of such property by the Alien Property Custodian to The Foundation. It disclaims all rights to compensation under such licenses prior to such dates.

Yours truly,

THE CHEMICAL FOUNDATION, INC.

By

DEFENDANT'S EXHIBIT No. 127.

ALIEN PROPERTY CUSTODIAN
ARLINGTON BUILDING
VERMONT AVENUE AND H STREET
WASHINGTON

CJS/FH. May 25, 1922.

Chemical Foundation, Inc.,
81 Fulton Street,
New York, N.Y.

Gentlemen:—

I am in receipt of your letter of May 23rd, and note that it is your intention to file suit for the recovery of royalties accruing under patents sold to the

Chemical Foundation which had been previously licensed by the Federal Trade Commission under Section 10 of the "Trading with the Enemy Act."

I also note that the Chemical Foundation has determined to make claim only for such royalty as has accrued since the respective dates of the conveyances of these patents by the Alien Property Custodian to the Chemical Foundation.

Yours very truly,

(Sgd.) THOS. W. MILLER,
Alien Property Custodian.

DEFENDANT'S EXHIBIT No. 128.

[H. R. 8078, Sixty-sixth Congress, first session.]

AN ACT To regulate the importation of coal-tar products, to promote the establishment of the manufacture thereof in the United States, and, as incident thereto, to amend the act of September 8, 1916, entitled "An act to increase the revenue, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congrss assembled, That title 5 of an act entitled "An act to increase the revenue, and for other purposes," approved September 8, 1916, be, and hereby is, amended to read as follows:

"SEC. 500. That on and after the day following the passage of this act, except as otherwise specially provided for in this title, there shall be levied, collected, and paid upon the articles named in this section when imported from any foreign country into the United States or any of its possessions, except

the Philippine Islands, the islands of Guam and Tutuilla, the Virgin Islands, and the Canal Zone, the rates of duties which are prescribed in this title, namely:

"FREE LIST.

"Group I. Acenaphthene, anthracene having a purity of less than 30 per cent, benzol, carbazol having a purity of less than 65 per cent cumol, cymene, fluorene, methylanthracene, methylnaphthalene, naphthalene having a solidifying point less than 79° centigrade, pyridin, quinolin, toluol, xylol, dead or creosote oil, anthracene oil, pitch of coal tar, pitch of blast-furnace tar, pitch of oil-gas tar, pitch of water-gas tar, crude coal tar, crude blast-furnace tar, crude oil-gas tar, crude water-gas tar, all other distillates of any of these tars which on being subjected to distillation yield in the portion distilling below 190° centigrade a quantity of tar acids less than 5 per cent of the original distillate, all mixtures of any of these distillates and any of the foregoing pitches, and all other products that are found naturally in coal tar, whether produced or obtained from coal tar or other source, and not otherwise specially provided for in this title, shall be exempt from duty.

"DUTIABLE LIST.

"Group II. Acetanilid not suitable for medicinal use, alphanaphthol, amido-benzoic acid, amidonaphthol, amidophenetol, amidophenol, amidosalicylic acid, aminoanthroquinone, anilin oil, anilin salt, anthraquinone, arsanilic acid, benzaldehyde not suitable for medicinal use, benzalchloride, benzanthrone, benzidin, benzidin sulphate, benzoic acid not suitable for medicinal use, benzoquinone, benzoylchloride, benzylchloride, betanaphthol not suitable for medicinal use, brombenzol, chlorbenzol, chlorophthalic acid, cinna-

mic acid, cumidin, dehydrothiotoluidin, diaminostilbene, dianisidin, dichlorphthalic acid, dimethylanlin, dimethylamidophenol, dimethylphenylbenzylammoniumhydroxide, dimethylphenylenediamin, dinitrobenzol, dinitrochlorbenzol, dinitronaphthalene, dinitrophenol, dinitrotoluol, dioxynaphthalene, diphenylamin, ethylbenzyl aniline, hydroxyphenylarsinic acid, metanilic acid, methylanthraquinone, naphthylamin, naphthylenediamin, nitranilin, nitroanthraquinone, nitrobenzaldehyde, nitrobenzol, nitronaphthalene, nitrophenol, nitrophenylenediamin nitrosodimethylanilin, nitrotoluol, nitrotoluylenediamin, phenol, phenylenediamin, phenylhydrazine phenylnaphthylamin, phenylglycocoll, phenylglycocoll-orthocarboxylic acid, phthalic acid, phthalic anhydride, phthalimid, resorcin, not suitable for medicinal use, salicylic acid and its salts not suitable for medicinal use, sulphanilic acid, thiocarbanilid, thiosalicylic acid, tetrachlorphthalic acid, tetramethyldiaminobenzophenone, tetramethyldiaminodiphenylmethane, toluol sulphochloride, toluol sulphamid, tribromphenol, toluidin, tolidin, toluylenediamin, zylidin, or any sulphoacid of sulphoacid salt of any of the foregoing, or of any of the products provided for in Group I; all other products by whatever name known which are employed in the manufacture of any of the products provided for in Group II or III and which are obtained, derived, or manufactured in whole or in part from any of the foregoing or from any of the products provided for in Group I; anthracene having a purity of 30 per cent or more, carbazol having a purity of 65 per cent or more, metacresol having a purity of 90 per cent or more, naphthalene having a solidifying point of 79° centigrade or above, orthocresol having a purity of 90 per cent or more, paracresol having a purity of 90 per centum or more; all distillates of coal tar, blast-furnace tar, oil-gas tar, and water-gas

tar, which on being subjected to distillation yield in the portion distilling below 190° centigrade a quantity of tar acids equal to or more than 5 per cent of the original distillate; all mixtures, including solutions, consisting in whole or in part of any of the foregoing except sheep dip and medicinal soaps, not otherwise specially provided for in this Act; all the foregoing not colors, dyes, or stains, color acids, color bases, color lakes, leuco-acids, leuco-bases, indoxyl, indoxyl compounds, ink powders, photographic chemicals, medicinals, flavors, synthetic resin-like products, synthetic tanning materials, or explosives, and not otherwise specially provided for in this title, 40 per cent ad valorem.

"Group III. All colors, dyes, or stains whether soluble or not in water, color acids, color bases, color lakes, leuco-acids and leuco-bases whether colorless or not, indoxyl and indoxyl compound; ink powders; photographic chemicals; acetanilid suitable for medicinal use, acetphenetidin, acetylsalicylic acid, antipyrine, benzaldehyde suitable for medicinal use, benzoic acid suitable for medicinal use, betanaphthol suitable for medicinal use, phenolphthalein, resorcin suitable for medicinal use, salicylic acid and its salts suitable for medicinal use, salol, and other medicinals; sodium benzoate; saccharin, methylsalicylate, coumarin, and other flavors; synthetic phenolic resin and all resinlike products prepared from phenol, cresol, phthalic anhydride, coumarone, indene, or from any other article or material provided for in Group I or II, all of these products whether in a solid, semisolid, or liquid condition; synthetic tanning materials; picric acid, trinitrotoluol, and other explosives except smokeless powders; all of the foregoing when obtained, derived, or manufactured in whole or in part from any of the products provided for in Group I or II; nat-

ural alizarin and natural indigo, and colors, dyes, stains, color acids, color bases, color lakes, leuco-acids, leuco-bases, indoxyl, and indoxyl compounds obtained, derived, or manufactured in whole or in part from natural alizarin or natural indigo; natural methyl salicylate or oil of wintergreen or oil of sweet birch; natural coumarin; and all mixtures, including solutions, consisting in whole or in part of any of the articles or materials provided for in this group, 45 per centum ad valorem.

"SEC. 501. That on and after the day following the passage of this act, in addition to the duties provided in section 500, there shall be levied, collected, and paid upon all articles contained in Group II a special duty of 6 cents per pound, and upon all articles contained in Group III a special duty of 7 cents per pound: *Provided*, That the special duties herein provided for on colors, dyes, or stains, whether soluble or not in water, color acids, color bases, color lakes, leuco-acids, leuco-bases, indoxyl and indoxyl compounds, shall be based on standards of strength which shall be established by the Secretary of the Treasury, and that upon all importations of such articles which exceed such standards of strength the special duty of 7 cents per pound shall be computed on the weight which the article would have if it were diluted to the standard strength, but in no case shall any such article of whatever strength pay a special duty of less than 7 cents per pound: *Provided further*, That beginning six months after the date of passage of this act no package containing any such color, dye, stain, color acid, color base, color lake, leuco-acid, leuco-base, indoxyl, or indoxyl compound shall be admitted to entry into the United States unless such package and the invoice shall bear a plain, conspicuous, and truly descriptive

statement of the identity and percentage, exclusive of diluents, of such color, dye, stain, color acid, color base, color lake, leuco-acid, leuco-base, indoxyl, or indoxyl compound contained therein: *And provided further,* That beginning six months after the date of passage of this act, no packages containing any such article shall be admitted to entry into the United States if it or the invoice bears any statement, design, or device regarding such article or the ingredients of substances contained therein which is false, fraudulent, or misleading in any particular. In the enforcement of this section the Secretary of the Treasury shall adopt a standard of strength for each dye or other product which shall conform as nearly as practicable to the commercial strength in ordinary use in the United States prior to July 1, 1914.

"The Secretary of the Treasury is hereby authorized to make regulations for the enforcement of the provisions of this title.

"SEC. 502. That paragraphs 20, 21, 22, 23, 179, 394, 452, and 514; and the provision for salicylic acid in paragraph 1; and provisions for salol, phenolphthalein, acetanilid, acetphenetidin, antipyrine, acetylsalicylic acid, and aspirin in paragraph 18; and the provision for benzoate of soda in paragraph 67; and the provisions for carbolic and phthalic acids in paragraph 387 of an act entitled 'An act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' approved October 3, 1913, are hereby repealed: *Provided,* That all articles which may come within the terms of paragraphs 1, 5, 14, 29, 37, 46, 63, 501, and 538 of said act of October 3, 1913, as well as within the terms of Group I, II, or III of section 500 of this act, shall be assessed for duty or exempted from duty, as the case may be, under this act.

"SEC. 503. That on and after the day when this act shall go into effect all of the foregoing goods, wares, and merchandise previously imported, for which no entry has been made, and all of the foregoing goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subject to the duties imposed by this act, and to no other duty, upon the entry or the withdrawal thereof: *Provided*, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse said duties shall be levied and collected upon the weight of such merchandise at the time of its entry.

"SEC. 503 (a). During the period of two years after the date of the approval of this act it shall be unlawful for any person or persons or corporation to import or bring into the United States, or any of its possessions, except under license previously obtained, as hereinafter provided, from the United States Tariff Commission, any of the products enumerated in section 500 of this act, or any product derived directly or indirectly from coal tar including crude products and intermediate products, as well as dyestuffs, medicinals, and other finished products, and including mixtures and compounds of such products and other products.

"To meet the reasonable expenses of the United States Tariff Commission in the execution of the duties imposed upon it by this act, the cost of maintenance of a suitable office at a place to be designated by the commission, the commission may charge a reasonable fee for the issue of each license. Should the moneys received from such fees in any year be less than the said expenses the deficiency shall be paid out

of the appropriation for 'expenses of collecting the revenue from customs.'

"SEC. 503 (b). The said United States Tariff Commission shall issue licenses to import for domestic consumption such of the products covered by section 503 (a) of this act, as may be unobtainable from domestic sources and also such and such only of the said products as may, though obtainable from domestic sources, be unobtainable on reasonable terms as to price, quality, and delivery. The commission shall limit the issue of licenses to import any product as nearly as may be to the quantities required by the actual current needs of the consuming industries in the United States, having regard to the necessities of such industries as are unable to determine beforehand their requirements. Nothing herein contained shall authorize the commission to refuse a license to a manufacturer, person, or agent to import for actual use by the manufacturer a foreign dye when such domestic dye of equal quality is not immediately available for his use. The commission in passing upon applications for such licenses may regulate its own practice and procedure, but shall so regulate the same as to prevent all avoidable delay.

"SEC. 503 (c). Any product described in section 503 (a) of this act which shall be imported into the United States or any of its possession without license, as provided in said section 503 (a), shall be forfeited and shall be destroyed whenever and wherever found.

"SEC. 503 (d). Any person subject to the jurisdiction of the United States who shall, either as principal or as accessory, import or attempt to import or aid in importing any product described in section 503 (a) of this act without license as therein provided shall be fined not exceeding $5,000 or the value of

such product at the time of importation, whichever shall be greater, or shall be imprisoned for not more than one year, or both.

"SEC. 504. Except as otherwise herein specially provided, this act shall take effect on the day following its passage."

DEFENDANT'S EXHIBIT No. 129.

HOUSE OF REPRESENTATIVES.

66th Congress, 1st Session. Report No. 209.

IMPORTATION OF COAL-TAR PRODUCTS.

August 1, 1919.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Longworth, from the Committee on Ways and Means, submitted the following

REPORT.

[To accompany H. R. 8078.]

The Committee on Ways and Means, to whom was referred H. R. 8078, "A bill to regulate the importation of coal-tar products, to promote the establishment of the manufacture thereof in the United States, and, as incident thereto, to amend the act of September 8, 1916, entitled 'An act to increase the revenue, and for other purposes,'" having had the same under consideration, report it back to the House without amendment and recommend that the bill be passed.

This bill amends the present law in four important particulars. In its technical details it follows sub-

stantially the recommendations of the Tariff Commission in bringing the phraseology of the law up to date so as to prevent evasions of its provisions through undervaluation or false designation of articles sought to be imported. Experience in the administration of the existing law has made it clear that it is not so worded as to completely give effect to the intent of Congress, and it is believed that these technical changes will fulfill that purpose. In the second place, it repeals that provision under which the specific duties shall be reduced at the rate of 20 per cent a year for five years. It increases the rates of duty from 15 per cent ad valorem and 2½ cents a pound on the intermediates to 40 per cent ad valorem and 6 cents a pound, and upon the finished product from 30 per cent ad valorem and 5 cents a pound to 45 per cent ad valorem and 7 cents a pound. Expert chemical opinion was unanimous that the rates of duty on the intermediates should be substantially the same as those upon the finished product. In the fourth place, the bill provides that for two years no foreign dyes can be imported except under a license granted by a board created in the bill.

The bill subdivides, as does the present law, the materials used in the dye industry into three classes —the crudes, the intermediates, and the finished product. The process of producing the crudes is comparatively simple, they being actually present in coal tar and only an isolation. Any country which like this has an abundant supply of cheap coal and a great steel industry requiring much coke has an unlimited supply of the raw material, and the crudes therefore require no protection. But with regard to the intermediates the situation is entirely different. Their production requires the most elaborate chemical processes, which can be carried out without the waste of a large proportion of the raw materials used only by men of the

most profound chemical knowledge and long experience, and such men are not yet available in sufficient numbers in this country. Under these circumstances, therefore, it is apparent that this industry requires for the present at least a very high degree of protection.

All this is still more true of the finished product, which may take one of six different forms. By further chemical processes, in some cases very simple, these intermediates may be converted into dyes, perfumes, pharmaceuticals, tanning materials, high explosives like T. N. T. and picric acid, or into poison gas. As a class these finished products, requiring as they do further labor and skill of a class plentiful in Germany but still very scarce in this country, need a greater though not much greater measure of protection than do the so-called intermediates.

The remarkable interdependence of the dye and the explosive industry is well illustrated by the fact that once having obtained by a long series of elaborate chemical operations a certain intermediate, that intermediate may be converted by one very simple chemical change into sulphur black, one of the most widely used dyes, or into picric acid, one of the most important of high explosives. The technical knowledge and skill, the materials and the apparatus necessary to make high explosives as well as poison gases and their antidotes are precisely what are to be found in any well-equipped dye works and nowhere else. A nation, therefore, which has a thoroughly complete dye industry capable of supplying its dye needs is always ready for a defensive or offensive war so far as the production of explosives and chemical gases are concerned. If, as seems likely, we are entering upon a period of international disarmament, the possession of such an industry becomes of infinite importance. In a world disarmed a nation possessing such a poten-

tial arsenal would be in a position to overwhelm any nation which had none and would be practically immune from attack.

An important, if not the most important, phase of this industry is its bearing upon the advancement of medical and industrial chemistry. It is the one industry which deals on a colossal scale with organic chemistry and it is upon organic chemistry that the progress of modern medicine rests. Salvarsan, for instance, was developed in a dye-works laboratory and is the first known certain cure for one of the most terrible scourges of humanity. It is confidently predicted that upon the further development of organic chemistry will rest the discovery of other cures for such devastating diseases as tuberculosis and even cancer.

This development rests upon the further development in this country of skilled research chemists and it is only in a dye laboratory that large numbers of such chemists can find a livelihood. Accordingly, a well-developed dye industry in this country will furnish a tremendous reservoir of technically trained men and of scientific knowledge upon which the most important industries of the country may draw in time of peace and the Nation itself in time of war or of threatened war.

The economic importance of the industrial side of this question is illustrated by the fact that industries in this country producing nearly $3,000,000,000 worth of goods each year are absolutely dependent upon coal-tar dyes, and industries producing as much more annually are indirectly dependent upon coal-tar dyes and kindred materials.

For many years before the war we had practically no dye industry in this country. Such dye works as we had were merely assembling plants for German materials and supplied only about one-tenth of the

American market. Accordingly, all the huge industries requiring dyestuffs were absolutely at the mercy of Germany and could have been dealt a crushing blow by Germany at any time the German trust saw fit. That Germany realized this is illustrated by a dispatch sent on March 13, 1915, by Count von Bernstorff to his own Government, as follows:

Serial No. 432 of March 13, 1915. It is reported to me by Hossenfelder, telegram No. 4, that the stock of dyes in this country is so small that by a German embargo about 4,000,000 American workmen might be thrown out of employment.

As a matter of fact, Germany early in 1915, by the withdrawal of her supplies of dyes, attempted to force this Government into hostile action against Great Britain, and if she had had the power to send her own textiles into this country she would have inflicted a blow upon our textile industry from which probably it would have never recovered.

The war forced upon America the building up of the dye industry, for a situation arose under which many industries came to a practical standstill and even the Government itself was in danger of having to cease to function in many important branches. For instance, the difficulty of securing printers' ink, which was entirely dependent upon dyes, brought about a situation under which the closing of the Government Printing Office seemed imminent and the Bureau of Printing and Engraving was in most serious embarrassment. The dyes necessary for even cheap and necessary clothing jumped in price in some cases 5000 per cent and in other cases were not procurable at all. Fortunately, we had in this country an unlimited supply of the raw materials and patriotic Americans in all branches of industry set to work to remedy the situation by making their own dyes.

Vast amounts of capital were risked without any assurance that it would not in the end be a total loss, as no one could guess how long the war would last, and as a result to-day we have in this country a dye industry which, although it is a mere baby, is able to supply the country's needs in most essentials and will undoubtedly be able to supply the missing colors if given a reasonable time to get surely on its feet.

Under such conditions it would seem impossible that any loyal American would not realize the absolute necessity of saving and fostering such an industry as this. Only three methods of legislative assistance have been suggested—a tariff, a tariff supplemented by an antidumping provision, and a tariff supplemented by a licensing system. Your committee believes that only the last of these methods would be effective, and has accordingly recommended its adoption.

The plan as provided in this bill is to form a licensing commission, its members to be designated by associations engaged in and representative of both the producing and consuming industries. This commission will have power to grant licenses for the importation of foreign dyes under certain conditions. It is positively commanded to grant licenses to any applicant to import any foreign dye which is not obtainable in this country from domestic sources, and any dye which, while made in this country, is not obtainable at a reasonable price, of good quality, and within a reasonable time. Thus absolute assurance is given any American consumer of dyes that he can at any time obtain the foreign product where the American industry is unable to supply on favorable terms. Conversely, it will absolutely exclude importation of dyes which are made in this country of satisfactory quality and at fair prices and insure the development and extension of the manufacture of those dyes. Furthermore, the applications for the importation of such dyes

as are not made here will promptly stimulate our manufactures to make the same dyes by showing that a strong demand exists for them and will thus guide the industry into the development which is really required.

During the life of this system a substantial number of dyes not made in this country will no doubt be imported, and, as they will be subject to the rates of duty provided in this bill, will produce a very substantial revenue for the Government.

Your committee does not suggest a license system as a permanent governmental policy, but feels that nothing else can meet the present emergency. Accordingly your committee recommends the license plan, together with an increased tariff, because as soon as the peace treaty is ratified the new American dye industry will be exposed to competition from an adversary so powerful and so desperate that no practical rate of duty can offer any real defense. The whole huge German dye industry, capable at the time of supplying the entire demand of the world, was combined in 1916 into a single immense trust, organized on purpose to fight its way back to the former German world monopoly. The combination is even now enormously prosperous. Starting with assets of nearly half a billion dollars, invested in the Empire's most remunerative industry, plants of the trust have been busy throughout the war making all Germany's poison gases, many of her munitions, and at the same time enough dyes to accumulate a reserve capable of flooding the market of this or any other country. Recent observers report that the working forces have been held together complete and intact throughout the war and since its cessation, and that one at least of the component companies has made large additions to plants since the armistice.

The resources of the trust are therefore colossal its plants are so huge and organized for such vast pro-

duction that unless it can regain most of its former world market half its equipment must lie idle and the other half run at low efficiency. It must then recover its world market or cease to exist as a profitable business. Even before the war, when its supremacy was uncontested, the German industry's competition was utterly unscrupulous. It practiced ruthlessly every form of corrupt and unfair competition known to commerce. What can be more certain, then, than that in the almost immediate future, when instead of a comfortable and safe supremacy it faces possible destruction, it will attack all competitors with reckless disregard of all considerations of business decency?

This attack, unless Congress acts very speedily, will be concentrated upon us. Great Britain, France, and Japan have protected their own Government-aided dye industries by license laws essentially similar to the one herein recommended. The market of the United States is therefore, except that of China, Germany's last opening. To penetrate it and destroy our domestic producers the trust will surely be glad to spend millions of its surplus. Not many millions would be needed. A very few adroitly used in practically giving away selected dyes would kill the business of even the strongest of our companies and leave us once more at the trust's mercy. Such an onslaught would be dangerous even if Germany's cost of production was as high as ours; but they are not. Even if the prices of labor and material are equal, an old dye industry can always undersell a new one. In making textiles or typewriters or paper or almost any other article that could be mentioned the maker gets practically all of his raw material back in finished product. In making dyes, however, some is lost in each of the many steps in the manufacture. How great each of these successive losses is depends on the experience of the

manufacturer. The total of his successive losses when the work is done by an inexperienced man is enormous. We, new at the job, lose half our raw material as the work goes on. The Germans, who have been at it for 40 years, lose but a trifling proportion. Their costs are thus far below ours and are likely to remain so, though in a decreasing degree, for a long time. An attempt to meet under such conditions such an assault from such an adversary would require unheard of tariff rates and it is highly probable that by undervaluation, rebates, and concessions, coupled with the old German method of full-line forcing and bribery, the German trust could nullify their effect.

No antidumping law yet suggested seems at all likely to meet the conditions in this particular industry on account of its immense complexity and the ease with which imports can be camouflaged by the skilled and unscrupulous German chemist. It is apparent, then, that any tariff bill which could possibly become law might, and, indeed, probably would, fail to insure the development of this industry, which is so essential to our national defense and well-being. It is equally clear that the proposed license plan, faithfully administered, will certainly furnish the necessary protection and that, too, without sacrificing revenue. Your committee believes that the industry is too important to be risked, and therefore recommends the adoption of this certain though unusual means of defense. Your committee makes this recommendation also as the only suitable answer to the similar British, French, and Japanese license laws. Those laws keep the competition of our dyes out of Great Britain, France, and Japan. Your committee does not believe that we should aid in building up their new subsidized industries by giving them at the expense of our producers, unlimited access to our market. When by this simple expedient we can at the same time make sure of obtaining every

foreign product we need and of building up our own vitally important industry, we feel that Congress ought not to hesitate or rest content with any doubtful remedy.

DEFENDANT'S EXHIBIT No. 130.

CALENDAR No. 380.

SENATE.

66th Congress, 2d Session. — Report No. 425.

IMPORTATION OF COAL-TAR PRODUCTS

February 13 (calendar day February 14), 1920.—Ordered to be printed.

Mr. Watson, from the Committee on Finance, submitted the following

REPORT.

[To accompany H. R. 8078.]

The Committee on Finance, to whom was referred the bill (H. R. 8078) to regulate the importation of coal-tar products, to promote the establishment of the manufacture thereof in the United States, and, as incident thereto, to amend the Act of September 8, 1916, entitled "An Act to increase the revenue, and for other purposes," having considered the same, report favorably thereon with the recommendation that the bill do pass with amendments.

Under the tariff act of September 8, 1916, the coal-tar chemicals are divided into three groups:

Group 1 comprises the crudes, which are on the free list;

Group 2 the intermediates, dutiable at 15 per cent and 2½ cents per pound; and

Group 3, finished products, dutiable in part at 30 per cent and part at 30 per cent and 5 cents per pound.

Before the Great War, Germany produced $68,300,000 worth of artificial dyes, which was three-fourths of the world's consumption. In 1914 there were seven establishments in the United States engaged in this industry. There was $3,000,000 capital invested and about 500 people employed, and the salaries and wages paid amounted to $500,000. The production was valued at $3,596,795.

The conditions brought about as a result of the war forced the people of this country to a full realization of their dependence upon Germany for dyes. They found that many industries needed these articles; that very little capital was invested in plants for the manufacture of either dyes or intermediates; and that prior to 1914, it had been deemed unwise by all manufacturers to engage in this industry, because it was universally believed to be impossible to compete with Germany in the manufacture of these products. But the war caused men in this country to engage in the industry for patriotic reasons. Old factories were enlarged; new companies were organized, and there was a great increase in the output as well as a steady improvement in the quality, uniformity, and variety of the dyes made in this country. The producers found many of the dyes covered by patents owned by citizens of Germany, which made it impossible to develop the industry here until the patents could be taken over by the Alien Custodian, which was done.

The consumption of dyes in the manufacturing establishments in the United States was about $25,000,000 a year, but these dyes were absolutely necessary in industries producing $3,000,000,000 worth of goods annually.

The Tariff Commission submitted a table of production of dyes in this country in 1918, and the amount

produced by the 77 companies making finished dyes was 58,464,866 pounds of the value of $62,026,390. This was a clear gain over the production of 1917, which amounted to 45,977,246 pounds valued at $57,796,288; and when it is remembered that there was imported into this country in 1914 over 45,000,000 pounds, the change is wonderful, and it is the best evidence of what can be done in this country.

It is true that at this time there are many important dyes which are not produced in this country, but the men who have become interesed in the industry believe that, in time and with proper protection and regulation, they will be able to supply the demand. More than 300 different dyes were made in the United States in 1918, and many dyes which were not produced in 1917 were on the list of American products in the year 1918. One of the large producers informed the committee that he was now producing several vat dyes, but he was not ready to put them on the market, and did not intend to offer them to the public until he was satisfied that they were equal to the foreign product.

The total production of the 127 companies producing intermediates in 1918, was 357,662,251 pounds, valued at $25,382,892.

The development of the manufacture of synthetic drugs is of the greatest public importance. During the year 1918 there were 32 different drugs of coal-tar origin made by 31 firms in the United States, and the output was more than 3,500,000 pounds, valued at $8,000,000. Three of these synthetic drugs were in great demand during the recent influenza epidemic.

The coke industry in the United States in 1918 amounted to 25,900,000 net tons by-product coke, and 30,480,000 net tons beehive coke. The by-products obtained in the manufacture of coke in 1917 were of the value of $206,313,000. The total output of finished

products of coal tar, exclusive of poison gases and explosives, was 75,494,000 pounds valued at $83,095,404. The research work in the coal-tar chemical industry gave employment to over 2000 chemists, or technically trained men, and fully 25,000 men without technical training, and they were paid from $10 to $75 per week. Only 15.4 per cent received less than $25 per week.

There are 11,037 establishments in the United States, employing 1,070,460 people, which are directly dependent on dyestuffs, and there are 56,949 establishments employing 1,037,183 people, which are indirectly dependent on dyestuffs, and there were various times in the early part of the war when 400,000 people might have been put out of work for want of dyestuffs.

In 1918 there were employed in the 187 different dye factories in the United States 27,000 people, and they produced 29,000 tons of dyes together with about 9000 tons of photographic chemicals, flavors, perfumes, etc., and the intermediates needful for dyes and for other purposes, largely military.

Dyestuffs are directly related to several of the gases used in war, and for that reason the Chemical Warfare Service is deeply interested in the development of the dye industry in the United States, for the same crudes, or intermediates, that are used in making dyes are also outlined in making gases.

Now that the war is over and the dye industry of Germany is seeking a market for its products in this country, the producers in the United States will have many serious difficulties to meet if proper protection is not given them. If legislation is not enacted to protect and encourage the dye industry in this country, Germany will do as she did before the Great War. She will have her factories produce more than they can sell at home, and the surplus will be exported to this country and sold at a price which home producers can not meet. And the result will be that Germany will

destroy the domestic manufacture and secure a monopoly of the dye industry, as she did prior to the war. Thousands of distinct dyes were produced in German factories, and over 900 of these were actually sold in large quantities in American markets before the war.

There is another thing which the people of the United States must remember, and that is that all the most important explosives of the present day are either coal-tar products or the result of chemical processes requiring the use of coal tar, and in all dyestuff factories there is unavoidable production of large quantities of substances which are directly available for conversion into explosives, so that it is important that the Government aid the industry in every way possible.

When the importation of dyes from Germany was cut off by the war, it was encouraging to the people of this country to see the large number of people who went into the industry to serve the Government. There were large establishments and small ones, everyone doing its full part. They commenced with the dyes which were the easiest to produce, and gradually expanded the production until today they are producing about 90 per cent of the dyes needed in this country.

One who has read the story of the work of the German Government in the United States just prior to the war, knows that the chemical industry in this country which was under the control of the German Government was the center of espionage. German propaganda and direct Government activities. They prevented the use of coal-tar products in the munition industry. They undertook to corner the supply of phenol in the United States, and prevent its use in the manufacture of high explosives, and at the outbreak of the war they stopped its importation.

The United States is virtually independent of Germany so far as the dye industry is concerned, and it

is our duty to keep it so. We know what Germany will do to regain her hold on the industry in this country. We know that she will resort to State aid, cartel, combinations, trade export premiums, dumping, bribery, espionage, and propaganda. She did this before, and she will do it again.

Your committee recommends that the sections of the House bill providing for the issuance of licenses to persons desiring to import foreign dyes for domestic consumption be stricken out, because we are opposed to a license system in the United States and do not desire to see the Government take the initial step in entering upon such a system. The reasons for this are as numerous as they are obvious, and we do not deem it necessary to enter upon any extended argument as to the merit of our contention.

Your committee further recommends that instead of the license system provided for in the House bill there shall be established an embargo on the admission of dyes to this country to be administered by the Tariff Commission in accordance with such rules and regulations as the commission may adopt within the limitations imposed by this act.

Section 504 provides that for three years after the approval of this act no dye or intermediate shall be admitted to entry into the United States, or any of its possessions, unless the Tariff Commission shall determine that such article or a satisfactory substitute therefor is not obtainable in the United States or any of its possessions on reasonable terms as to quality, price, and delivery; and, furthermore, that such article is required for use by an actual consumer.

Section 505 defines the term "reasonable quality"; section 506 defines the expression "reasonable terms as to price"; and section 507 defines "reasonable terms as to delivery," as used in section 504.

Section 508 provides that the Tariff Commission may make all rules and regulations necessary and proper for the accomplishment of the purposes of this act, provided that no article enumerated in either group 2 or group 3 of section 500 of the act shall be admitted to entry into the United States or any of its possessions in any case where the Tariff Commission shall determine that the actual consumer for whose use such article is intended has received or may obtain a six months supply of the article he seeks to import.

Section 508 further provides that no article enumerated in either of the above groups which may be useful both as a substitute for a domestic article and at the same time suitable for use for some other purpose for which the domestic article is not adapted shall be admitted to entry unless the Tariff Commission shall determine that such article is imported for such other purpose.

Section 509 provides that the Tariff Commission shall have exclusive jurisdiction of the distribution among the consumers in the United States of any of the articles which may be available under the treaty of peace with Germany.

Section 510 provides that notwithstanding the prior termination of the present war, the provisions of the trading-with-the-enemy act which prohibit or control the importation into the United States of dyes or intermediates are continued for a period of 90 days beginning with the date of taking effect of this act.

Sections 511 and 512 confer upon the Tariff Commission other powers deemed essential for the successful execution of this act, while sections 513 and 514 fix penalties for the violation of any of its provisions.

Section 518 declares it to be the intent of Congress in enacting this act to build up, develop, and protect the dyestuffs manufacturing industry in the United

States and also thereby practically lays the injunction upon the Tariff Commission to so construe and effectuate such intent.

Without going into the details of the operation of this system your committee believe that will at once protect the manufacture of all those dyes and intermediates that are now being produced in the United States, will enable those who desire to manufacture those dyes and intermediates that are not now being produced in the United States to embark with confidence upon their production, will enable all the dye users in the country to obtain on reasonable terms as to quality, price, and delivery all the dyes needed for their purpose whether produced here or abroad, and will within the time limit fixed by the bill establish a complete dye industry in this country that will fully meet the demands of the American consumer, and permanently establish this great industry on an enduring basis.

Your committee believe that, inasmuch as this bill provides for a system of embargoes that will protect the manufacturers of dyes in such imports alone—those provided by the existing law—and therefore recommend that the rates provided in the House bill shall be amended by the insertion of those provided by the law approved on September 8, 1916.

Your committee believe that some import duties are necessary in order to protect those domestic manufacturere who desire to enter upon the production of those dyes and intermediates that are not now being made in the United States, and therefore by a majority vote recommend that the existing rates be retained. We therefore recommend the passage of the bill with these amendments.

DEFENDANT'S EXHIBIT No. 131.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Sts. N.W.
Washington, D. C.

January 14, 1921.

Navy Department,
Bureau of Ordnance,
Washington, D. C.

Attention of Commander A. L. Norton

Dear Sir:—

Attached you will find a list of one hundred and sixty (160) Patents which have been assigned to The Chemical Foundation, Inc., and which Dr. Van Doren agreed to license to the Government. I have sent the original of this list to Dr. Van Doren at his request, but will suggest that you write The Chemical Foundation, Inc., 81 Fulton Street, New York, attention of Dr. Van Doren, and request him to execute an Assignment to the Government, covering this list or such a part of it as your Department may desire.

I will appreciate it if you will do this without awaiting the completion of the full list of Patents you desire, as the placing of this Assignment on record would materially assist us in the final adjustment of our records.

I received this morning the correspondence in regard to the gyroscope and other patents and will give this immediate attention.

Very truly yours,

(Sgd.) J. R. ZIMMERMAN,
Division of Records.

JRZ:MBJ

DEFENDANT'S EXHIBIT No. 132.

37649/2(S1)-O
ALB

NAVY DEPARTMENT
BUREAU OF ORDNANCE
WASHINGTON, D. C.

Jan. 19, 1921

Attention Dr. Van Doren.

Dear Sir:

Mr. J. N. Zimmerman, Office of the Alien Property Custodian, under date of January 14th submitted to this Bureau a list of one hundred and sixty patents which have been assigned to the Chemical Foundation, Inc., the original of which list was forwarded on the same date to Dr. Van Doren at his personal request.

It will be appreciated if you will have an assignment made to the Navy Department for the United States Government of these one hundred and sixty patents without waiting for the completion of the full list of patents promised by Dr. Van Doren in a recent interview with the Bureau of Ordnance.

Copy of Mr. J. N. Zimmerman's letter of January 14th is inclosed herewith.

Very truly yours,

(Sgd.) CHAS. B. McVAY, Jr.,
Rear Admiral, U. S. Navy
Chief of the Bureau of Ordnance.

1 inclos.
The Chemical Foundation, Inc.,
81 Fulton St.,
New York City.

DEFENDANT'S EXHIBIT No. 133.

THE CHEMICAL FOUNDATION
81 Fulton Street,
New York City

January 20, 1921.

Rear Admiral Chas B. McVay, Jr.,
Chief of the Bureau of Ordnance,
Bureau of Ordnance,
Navy Department,
Washington, D. C.

In re: (S1)-O
ALB

Sir:

We beg to acknowledge receipt of your letter dated January 19, 1921 and in reply are pleased to inform you that an assignment covering the list of 160 patents forwarded to you by J. R. Zimmerman of the office of the Alien Property Custodian, will be immediately drawn up and placed in your hands at the earliest convenient date.

Yours very truly,
THE CHEMICAL FOUNDATION, INC.
By LLOYD VAN DOREN.

LVD:ACK

DEFENDANT'S EXHIBIT No. 134.

NAVY DEPARTMENT,
WASHINGTON

8247-457:14
December 4, 1919.

This Department is advised by the Alien Property Custodian that there have been seized and transferred

Gentlemen:

to your organization the following described Anschutz patents, viz:

1170388	841612
1141099	794654
1069842	1186686
973611	1180815

with the understanding that the use by the Government of apparatus embodying the inventions covered by said patents was to be permitted without charge or for a nominal consideration.

Certain apparatus embodying those inventions are in use by the Navy Department and it is requested that license be granted the Government to manufacture and cause to be manufactured, and to use the inventions covered by the above enumerated patents, and forwarded to this Department.

Very respectfully,
(Sgd.) JOSEPHUS DANIELS,
Secretary of the Navy.

Chemical Foundation,
81 Fulton Street,
New York, N. Y.

DEFENDANT'S EXHIBIT No. 135.

December 8, 1919.

Navy Department,
Washington,
D. C.

Attention of Josephus Daniels, Esq.
Secretary of the Navy

Subject: Anschutz Patents

Gentlemen:

We are in receipt of your letter of December 4th

and this matter will receive our immediate attention.

Yours very truly,
THE CHEMICAL FOUNDATION
INCORPORATED,
S. A. TUCKER, *Chemist.*

SAT/S

[Note at bottom of letter:]
Taken up with Mr. Hoguet by phone

DEFENDANT'S EXHIBIT No. 136.

BUREAU OF ORDNANCE,
NAVY DEPARTMENT.

27635/39 (L3-1)-O ZH

July 2, 1920.

Subject: Alien enemy owned patents.

Sirs:

The Department has been negotiating with the Alien Property Custodian concerning the acquisition of non-exclusive license under certain alien enemy owned patents of particular interest to the War and Navy Departments and the following is quoted from a recent letter from the Alien Property Custodian:

"The following patents have been conveyed to the Chemical Foundation, Inc., 81 Fulton Street, New York, N. Y.:

794,654 C	973,611
841,612 C	1000,609
877,034 C	1062,166
940,166	1094,724
942,393	1101,081
947,971	

"Your attention is directed to the Executive Order of February 26, 1919, which recites that the Chemical Foundation, Inc., is empowered to grant fee licenses to the United States for any use which the United States may desire to make of the inventions covered by letters patent, and the same rights which have been conveyed to it by the Alien Property Custodian."

These patents are as follows:

Number	*Patentee*	*Article*
794,654	H. Anschutz-Kaempfe	Gyroscope
841,612	H. Anschutz-Kaempfe	Gyro Support
877,034	" " "	Gyroscope
940,166	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Rangefinder
942,393	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Angle Measuring Apparatus
947,971	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Binocular
973,611	H. Anschutz-Kaempfe	Gyroscope
1,000,609	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Rangefinder
1,062,166	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Rangefinder
1,094,724	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Telescope
1,101,081	A. Konig Assigned to Firm of Carl Zeiss, Jena, Germany.	Optical Square

Since these eleven patents are not involved in chemical industry, and cover material which is primarily of interest to the War and Navy Departments, it is requested that you inform the Bureau as to the willingness of the Chemical Foundation to assign to these two Government Departments, for a nominal consideration, a non-exclusive license to manufacture and use or have manufactured for their use the material described therein.

An early reply will be appreciated.

Very truly yours,

CHAS. B. McVAY, Jr.,
Chief of Bureau.

Chemical Foundation, Inc.,
81 Fulton St.,
New York City.

DEFENDANT'S EXHIBIT No. 137.

THE
CHEMICAL FOUNDATION
81 Fulton Street,
New York City.

July 9, 1920.

Navy Department,
Bureau of Ordnance,
Washington, D. C.

Gentlemen:

Attention Rear Admiral Charles B. McVay, Jr., Chief of Bureau.

1. The Chemical Foundation begs to acknowledge receipt of your letter dated July 2, 1920 on the subject of alien enemy owned patents.

The patents cited pertain generally to gyroscopic and rangefinder apparatus. You request The Foun-

dation to license the Navy Department to manufacture or use, or have manufactured for it, the apparatus covered by these patents, in consideration of a nominal royalty.

This matter could be easily determined were it not for the fact that certain licenses have already been issued to the Arma Engineering Company and the Sperry Gyroscope Company by the Federal Trade Commission, both of which licenses, as we understand it, require the payment of a royalty. If the Federal Trade Commission can be prevailed upon to cancel its outstanding licenses, this matter can be disposed of very promptly by the Chemical Foundation upon renewal of your request.

Yours very truly,

THE CHEMICAL FOUNDATION
INCORPORATED.

DOUGLAS I. MCKAY,
Vice President.

DIM:TAK.

DEFENDANT'S EXHIBIT No. 138.

BUREAU OF ORDNANCE,
NAVY DEPARTMENT.

27625/39(L3-1)-O DH

July 15th, 1920.

Subject: Alien enemy owned patents — Licenses granted to the Arma Engineering Company and the Sperry Gyroscope Company.

Sirs:

Receipt is acknowledged of your favor of the 9th inst., and the Bureau desires to express its appreciation for the information contained therein.

It is noted that certain licenses have been issued

by the Federal Trade Commission to the Arma Engineering Company and the Sperry Gyroscope Company. This is a matter of considerable interest to the Navy Department, and the Bureau would be pleased to receive full information as to the numbers of the patents under which license has been granted to these two companies and as to the terms of these licenses.

Early receipt of this information would be appreciated in order that the Bureau may make a study of the patents in question at an early date.

Very truly yours,

CHAS. B. McVAY, JR.,
Rear Admiral, U. S. Navy,
Chief of Bureau of Ordnance.

The Chemical Foundation,
81 Fulton Street,
New York City.

DEFENDANT'S EXHIBIT No. 139.

THE
CHEMICAL FOUNDATION
81 Fulton Street,
New York City.

July 19, 1920.

Navy Department,
Bureau of Ordnance,
Washington, D. C.

Attention Chas. B. McVay, Jr., Chief of Bureau.

Subject: Alien enemy owned patents — licenses granted to the Arma Engineering Company and the Sperry Gyroscope Company.

Gentlemen:

This acknowledges the receipt of your letter of July 15th on the above subject.

The foundation regrets that it cannot furnish you with the information that you request; but the Federal Trade Commission will probably be glad to render you full information in regard to the licenses they have granted on the patents in question.

Very truly yours,

THE CHEMICAL FOUNDATION, INC.,
H. E. BALEMAN,
Assistant to Vice President.

HEB/EP

DEFENDANT'S EXHIBIT No 140.

Report prepared by Nitrate Division Ordnance Office, War Department, assisted by Fixed Nitrogen Research Laboratory, Department of Agriculture, entitled "Report on the Fixation and Utilization of Nitrogen."

(Not Printed)

DEFENDANT'S EXHIBIT No. 141.

EXTRACTS FROM STATEMENT OF JOSEPH H. CHOATE, JR. BEFORE COMMITTEE ON WAYS AND MEANS, HOUSE OF REPRESENTATIVES, HEARINGS ON H. R. 2706.

I am a life-long Republican and a Republican by inheritance for generations, as many generations as there are generations of the Republican Party.

Mr. KITCHIN. Go ahead. We will not hold that against you.

Mr. CHOATE. I went into the office of the Alien Property Custodian as one of the volunteer assistants and was put in charge there of the chemical branch

of the Bureau of Investigations. I had charge of the investigation of that industry. We did not go far into the work of investigating the German connection with the chemical industry in this country before we came to the conclusion that the industry itself was the most vital single-key industry in the country, and before we saw that the German menace in that industry was of incalculable importance. We found that outside of the dye industry the American chemical industry could hold its own. That was so with the heavy chemicals and in the electro-chemical industry, both of which did very well, but we found that these were of insignificant importance as regarded the future of the country, compared to the dye industry. I shall have to go into that a little length to enable you to understand what I am going to talk about hereafter.

In the first place, we found that the connection between the dye industry and the industrial progress of the country was infinitely close. We found that the dye industry was the most complicated industry, probably, in the world. It really consists of a thousand different industries, because it produces several thousand different chemical products, each produced by a separate process. To give you an example of the magnitude of the industry, I can hardly do better than quote the figures as to some of the German concerns. The Badische Co. employ 11,000 and have 42 miles of railways in connection with its works. The Hoechst concern employs 8,000 men and produced before the war 11,000 separate colors. Each of these colors involved, perhaps, six or eight separate chemical processes, all starting from the 10 crude substances contained in coal tar, which in turn are converted by the action of other chemicals and interaction among themselves into 300 separate intermediates, and these into these innumerable separate dyes, by processes involving separate steps, each of which destroys the raw

materials and creates new materials entirely different. Each of these steps involves the production of by-products which nobody wants, for which uses have to be found. For many of them uses were found. Many of them could be used in the production of additional dyes and additional intermediates, but many new uses had to be created. We found that it was a peculiarity of the industry that it required a magnitude of research demanded by no other industry or 10 industries. As a consequence, we found that where any other industry employed one research chemist, the dye industry employs 100. As a consequence of that, the nation which has a real dye industry has at its disposal enormous research laboratories and an enormous number of research chemists who can, incidentally, be diverted to the service of any other form of industry which requires them, and who, therefore, offer a capacity for service which is developed by no other form of industry. This reacts in another direction, this demand for research chemists holding out a hope of livelihood to hundreds of young men in the universities who could not otherwise hope to devote their lives to this science. The net result of it is that in the country which has a complete, fully developed dye industry, reaching out into all products required for textiles and paper and leather and ink, there is an infinite supply of the knowledge required for the development of all the other industries, because every industry in the country requires chemical help and requires it more every day.

There is not an industry in this country that can not be made better, that can not be made more efficient, which can not produce its product in more satisfactory quality and more cheaply with the assistance of research chemists, than it does today.

And so we came to the conclusion that from the

mere point of view of an industrial science, a dye industry, a complete dye industry, was absolutely essential, but we had not gone much further than that in our study before we ran into connection with the military problem, which has been pointed out here by Gen. Sibert and Gen. Fries. We found that a complete dye industry was interchangeable with explosive works and poison gas factories. All our modern military explosives are coal-tar products. All the gases are coal-tar products, and all of them require the use of the technic and trained personnel, which are obtained in the dye factories and nowhere else. Accordingly, we came to the conclusion that the nation which had a dye industry had in that industry a colossal military advantage over any other. That was proven by Germany because she, and she alone, was able from the first to supply the incredible quantities of munitions which proved to be needed in this war. The Allies struggled along two years behind and it was only by incalculable efforts that they ever did make up the deficiency, and it was imposed upon the dye industry to do it.

Mr LONGWORTH. May I interrupt to mention a conversation which I had with a very distinguished American chemist who was graduated from Heidelberg 30 years ago and he told me that when he went to say good-bye to the head professor at Heidelberg, he asked him why it was that all the research work in chemistry in Germany seemed to be in the development of the coal-tar dyes. The professors were getting larger salaries and government bonuses in that industry, and the old professor said, "Young man, some day this will save the Fatherland." He was not a good prophet on the saving part of it, but they did not lose the war because they did not have abundant explosives.

Mr. CHOATE. Now, these aspects of the dye in-

dustry are of infinite importance. Of course, we immediately realized, long before we got far enough to realize the military importance of the industry, the industrial and scientific importance of the industry, and its economic importance. That seems to me a matter of infinitely less moment than the scientific and military importance, and we yet see how great it is. The industries in this country which can not get on without the use of coal-tar dyestuffs produce each year, according to the figures which will be submitted to you by the Dyes Institute representative, Dr. Matthews, from the census and official sources, produce each year $2,600,000,000 of goods, nearly three billion dollars annual product, which can not be produced without the use of coal-tar coloring materials. In addition to that, there are three billions more of things made up of these products which are indirectly but none the less really dependent upon coal-tar coloring material. In order to produce these six billions of dollars worth of goods, you have got to have the coal-tar dyes. We did not have them in this country. We were producing about three and a half million dollars in value in dyes. Our industry was a mere assembling industry operating in five or six small plants on German intermediates. We imported things almost finished from Germany and turned them into finished dyes here by final processes which are often very simple. In other words, our textile industry was an industry dependent upon coal-tar dyes, and we were absolutely enslaved to the producer, and the producer, and practically the sole producer, was Germany. I want to show you how complete that servitude was. You have been told by one or two of the witnesses who have already appeared here a little about how fearful the conditions were in the textile industry during the first years of the war, when the supply of

German dyes was cut off. That supply was not cut off instantaneously and on purpose; it was cut off gradually as the British blockade tightened. Large stocks were present in this country and two shiploads came in afterwards so that the German supply was gradually cut down. What do you think would have happened to the textile industries if it had not been gradual; if the Germans, having developed their own textile industry to the position where they could hope to monopolize the world demand, had attacked our textile industry by cutting off our dyestuffs? They could have done that instantaneously by shutting off the supply, and we would have had no recourse. By cutting it off bodily, in one moment our textile industry would have found itself helpless without the materials and without the stimulus of the war. That was the situation during the first two years of the war.

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Mr. MOORE. In papers left in New York, Washington, and elsewhere?

Mr. CHOATE. That I can not answer. The precise place I can not tell you. They have them now. You see a very short time after this the German authorities here began to see that their plan was not as successful as it might be. By withholding their dyestuffs they were not in position to destroy our textile industry for the benefit of their own at that time. The plan was by withholding dyes to put a pressure on the British and so break down the British blockade. By July, 1916, it developed that the plan of withholding was a failure. I read again from this report:

I think its failure is better told in a report made to Ambassador von Bernstorff and the German foreign office, by Waetzold, the business expert of the Ger-

man embassy, on July 21, 1916. Waetzold said: "The development of the dyestuff affair furnishes an unmistakable picture of the transformation of conditions which have taken place in regard to the will of American business circles to business with Germany. A year ago the attitude could be assumed with full right that the dyestuffs must be withheld in order to induce the Americans concerned and the public to raise energetic protest to the Government against the prevention of trade by England. To-day we must admit that we far overestimated the effect which we thought we should exert by withholding dyestuffs. The miscarriage of our plan did not lie in the fact that the evil economic conditions with which we reckoned did not arise, but solely in the fact that the feeling in the circles interested had in the wider sense so changed that they, in the last analysis, preferred to endure the evils rather than help Germany. It did not take much perspicuity on the part of the American to recognize that our sudden compliance even before the fruit, which the plan of withholding promised to bear could come to maturity, was dictated not by a spirit of friendliness and accommodation for suffering American industry, but sprang in part from an economic need of Germany (money revenue and the raising of the mark rate of exchange), and in the main from the desire to exert upon the public here a political influence favorable to Germany.

Mr. MOORE. If that was so, Mr. Choate, somebody in official life in America must have known something about this.

Mr. CHOATE. Not necessarily, at that time.

Mr. MOORE. Then what was the purpose of it, to induce us to urge a breaking of the British blockade?

Mr. CHOATE. Because when it became apparent that the dyes were scarce in this country, there would

be complaints. Then it would be easy for the diplomatic representative of the Germans to go to the State Department and say, "You must make representations to the British to break down the blockade because your people are suffering."

Mr. MOORE. Were there any such representations to the State Department as are made in this telegram and in that letter to our officials?

Mr. CHOATE. I understand they were constantly made. I have no first hand knowledge on that subject.

Mr. MOORE. Then the substance of this telegram and the substance of that letter which you now use very effectively in this argument were really known to our American officials before the war?

Mr. CHOATE. By no means. The facts produced by the German refusals to supply their goods here were known, but the fact that the Germans were deliberately withholding their goods was not known.

Mr. MOORE. Do you recall the arrival of the *Deutschland?*

Mr. CHOATE. Very well.

Mr. MOORE. It was reported about that time that she was here delivering dyes.

Mr. CHOATE. July, 1916.

Mr. MOORE. And American officials did not know about it.

Mr. CHOATE. No; and her arrival was a surprise, even to many of the German representatives.

Mr. MOORE. But she did bring dyestuffs?

Mr. CHOATE. Because the dyestuffs were the most valuable compact cargo which could be brought.

Mr. MOORE. How were they distributed, to American users?

Mr. CHOATE. To representatives of the German "big six." Our friend, Mr. Metz, got a lot of them, and representatives of the German big six. They

were sent to Schumacher & Co., of Baltimore, under instructions that they were to be delivered pro rata to the representatives of the German big six.

Mr. MOORE. This material you bring in now might be taken in the nature of a surprise. It is intensely interesting, at least, but I am trying to run your mind back to the arrival of that vessel, which was publicly heralded; the officials knew it as well as the Germans in this country knew it, and the material on that ship was distributed here to relieve the American situation.

Mr. CHOATE. I will tell you why.

Mr. MOORE. It must have been done with the knowledge and the consent of the officials of the United States; that is the point I am making.

Mr. CHOATE. No; I think that is uncertain. During those months—that is, between January and July, 1916—it appears from the documents which I am now going to read you. The attempt to force the attitude of the United States was a failure, and in July, 1916, Waetzold, another of the commercial advisers, reports as follows:

The development of the dyestuff affair furnishes an unmistakable picture of the transformation of conditions which has taken place in regard to the will of American business circles to do business with Germany. A year ago the attitude could be assumed with full right that the dyestuffs must be withheld in order to induce the Americans concerned and the public to raise energetic protest to the Government against the prevention of trade by England. To-day we must admit that we far over-estimated the effect which we thought we should exert by withholding dyestuffs. The miscarriage of our plan did not lie in the fact that the evil economic conditions with which we reckoned did not arise, but solely in the fact that the feeling in the circles interested had in the wider sense so

changed that they in the last analysis preferred to endure the evils rather than help Germany.

This condition existed until the dyestuffs came that were brought over on the *Deutschland*. There are a lot of things more on that line, but I am not going to take up your time. Suffice it to say, that the situation was such at that time, that if the war had not gone on, leaving Germany free to make her textiles and export them, she could at any moment have wrecked and ruined our textile, leather, paper, and ink industries, by withholding her supplies and fostering her own products.

Mr. MOORE. Did not that same condition prevail as to England?

Mr. CHOATE. By no means. You mean as to English industries?

Mr. MOORE. Yes.

Mr. CHOATE. Undoubtedly, I think it did.

Mr. MOORE. The effect on her of the withdrawal of dyes in England would have been as serious as with us.

Mr. CHOATE. I agree. The English dye industry had been almost smothered by Germany before the war.

Mr. MOORE. And they proceeded, as we did in the United States, to encourage the development of the dyestuffs industry.

Mr. CHOATE. With this difference, Mr. Moore. They were in the war from August, 1914, and they had nothing to spare for such outside work. They could produce only what was absolutely indispensable, and took a lot of material from us. As to the French, I must differ with the last witness. The French industry has never progressed and I think the Tariff Commission information is the same. Our information is that the French industry has not got anywhere.

Mr. MOORE. The gentleman ran over the country so in his first statement that I assumed he had knowledge.

Mr. CHOATE. The British have gone further than we propose to in encouraging their industry. They have subsidized it to a large extent, much larger than the figures stated by the last witness—somewhere in the neighborhood of £8,000,000 sterling.

Mr. MOORE. And they do there now. It is under the control or direction of the British Board of Trade.

Mr. CHOATE. They have not only half nationalized the industry and protected it by a licensing bill, but a tariff. I might say right there that Great Britain and France have had an absolute embargo, to all intents and purposes, for a number of months, but a tariff. I might say right there that Great mation from the French High Commission.

Mr. TREADWAY. What line of goods do you mean?

Mr. CHOATE. They are not able to do any more importing than they could possibly help, because of its effect upon foreign exchange and the value of the pound and franc.

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Mr. CHOATE. Gentlemen, I think I have perhaps said everything that need be said on the subject of the economic importance of the industry. Suffice it to say that at a very early stage in our investigation we were satisfied that nearly every industry in the country, except the metallic industries, were directly dependent on the dye industry and that almost everything we used and everything we ate needed colors. As you gentlemen sit there, everything that you deal with, from the nigrosine that colors the leather of your shoes black to the complexion of the ladies that you admire on the street, are coal-tar products. Never-

theless, when you have covered the economic side of it you have not scratched the surface.

Perhaps the most important of all the aspects of the coal-tar industry is that about which Dr. Stieglitz spoke to you. Organic chemistry is, of course, at the root of the whole science of medical chemistry, and medical chemistry is in its infancy. For a thousand years the physicians have been pouring into the unfortunate human system drugs of which they knew next to nothing. Until the relatively recent advance of science had begun to accumulate the enormous mass of data that was necessary, not even the physicians themselves understood the problem or had the slightest conception of its magnitude.

The human body consists of hundreds of little chemical factories pouring into the human system drugs of their own and upon the balance of those drugs depends human health. These drugs are organic chemicals, and until the process of studying out their effects has been completed and the innumerable millions of combinations of chemicals which they produce in the human inside have been reduced to scientific formulæ that can be known and studied, that science will remain in its infancy.

Now, the dye laboratories furnish the means and the only means for the furtherance of that science, and that science has but recently begun to grow. It has been held back by the immense development of bacteriological medicine with its serums and antitoxins, which has been so successful that the physicians of the world have only recently turned back from it to the study of drugs. Yet the results have been startling. Many of those results have been not only the product of industrial chemists at our laboratories of coal-tar research, but in many cases the discoveries have been made in the dye laboratories them-

selves. In Germany the cooperation between the academic and the coal-tar chemists was so complete that it was not an uncommon sight to see, in the dye works laboratory, dozens of academic chemists working side by side with the dye-works chemists on their own individual problems. Many of the greatest discoveries have been made in that way. Salvarsan itself was a dye-works product. Dr. Ehrlich had a theory that arsenic disseminated in the system in a particular way would kill the germs of the cruelest scourge of humanity and he had an idea that it could be done without injury by one of a particular group of compounds that number, say, 10,000. But how was he to get the facilities to make the experiments; where could he get the apparatus, materials, and assistants for the work? No university, no private laboratory could undertake it. He found the means at his hands in the dye-works laboratory of the great Cassella dye works, and the Cassella laboratories were placed at his disposal. And within a very few months that immense problem was worked out and that amazing triumph achieved.

So in like manner drugs for hundreds of other ailments have been developed. The most noted example is that of adrenalin, one of the most valuable and commonly used drugs. That was discovered in this country from an animal source. The German plants, as is possible with almost any of the drugs from an animal source, produced the substance synthetically from coal-tar products at a mere fraction of the cost of the animal product.

And so we say to you that the hope of the future in medical science lies in the great coal-tar industry; that there you find the promise and the only promise for the discovery of drugs to cure the cruel diseases which are the scourge of humanity. There and there

only lies the hope of the permanent cure of such diseases as tuberculosis and even cancer. For that reason we say that however important the economic aspect of this subject may be, however important the industrial aspect of this industry may be, however important the connection with national defense may be, a still more important field lies in this purely scientific aspect.

Now convinced as we thus become of the colossal importance of the coal-tar industry we almost equally become convinced of the desperate situation of this country. Our own industry as you have already heard, amounted to nothing prior to the war. The German industry was simply gigantic. We found that they had forty years start of us; that they had immense advantages in the source of raw materials, and had a very compact industrial district, smaller than one of our small States, in which they found all the elements for the development that were needed. They had an enormous supply of trained labor fitted to do work of the sort, who were willing to work on the same job until they died. They had an enormous number of cheap chemists that were turned out by the universities by the thousands, and they made the services of those chemists worth while by giving them social position and rewards in the way of titles and other things that enabled them to hold these chemists at their jobs at nominal salaries, and to further the research in the dye-works laboratories. And there is nothing the German chemist likes better than to sit down to the elimination of two or three thousand possibilities until he has exhausted them all and found out which of the possibilities would or would not do the thing he had in mind. That gave them, gentlemen, an enormous lead.

Beyond that, however, they had an enormous num-

ber of advantages which we do not have. In the first place, they were allowed to combine to any extent. They rapidly drifted into six large companies each of which became perfectly enormous. The smallest of them employed before the war began, more than the largest three, certainly the largest two, American houses now employ or have ever employed. They employed together, before the beginning of the war, approximately 50,000 men. In 1910, about, they coalesced into two large trusts, one consisting of three of the big six, the Bayer, Badische, and Berlin, and the other consisting of the other three, the Hoechst, Casalla, and Kalle. There were two or three outlying companies and a dozen small ones. These companies were closely united and assisted each other in every possible way. They had joint funds for fighting foreign competition and dividing the expense of new things, and dividing the expense of campaigns against competing industries in other countries.

But it did not stop there. In 1916, finding the danger they were placed in as a result of the war, the two trusts were combined with all the other outlying companies into one gigantic trust.

Mr. LONGWORTH. Have you any information as to whether the German Emperor himself owns stock in that concern?

Mr. CHOATE. I have been informed, on information that I think is good authority, that he did. This enormous trust has a nominal capital, adding up the nominal capitals of the various companies of which it is composed, of about $100,000,000. But the stocks of these companies were, on the average, worth on the Berlin Stock Exchange, at the time of the combination, about 400. So you can see the actual assets of the company were valued by the German public at above $400,000,000. They had systematically pursued

the policy of putting back into the works half of their enormous earnings, and still the average dividends of those companies, for a number of years, had been about 22 per cent. So that the industry was not only the most remunerative and most solidly intrenched industry in the German Empire, but was also one of the most remunerative and most solidly intrenched industries in the world. And here it was, combined in a single gigantic trust, organized expressly and admittedly to fight to get back the foreign trade which it had lost or which it was in danger of losing.

I have here, which I will not trouble you to read, but which I will ask to have inserted in the record, a report of the British Minister of Munitions on the subject of the Community of Interests, as it is called, with a diagram (which I might hand you to look at) showing the constitution of the trust.

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Mr. MOORE. It is stated in this very interesting publication of the Chemical Foundation (Inc.), which is evidently intended for this committee, that 4,500 of these patents which applied to chemistry Mr. Palmer has sold for the benefit of American industries to a quasi-trustee corporation, called the Chemical Foundation. This company is capitalized for $500,000—it is getting away from the Government now which had the patents in custody.

Mr. CHOATE. Precisely, and I will tell you why if you will let me.

Mr. MOORE. This company is capitalized for $500,000—$400,000 being 6 per cent preferred stock and $100,000 common stock also limited to dividends of 6 per cent. Now, it makes no difference how patriotic the gentlemen constituting this foundation may be nor what is said about their desire to bar German material, they are seizing those patents which

apparently belonged to German holders, through an arrangement with the Alien Property Custodian, and applying them to a purpose which unquestionably in the end is to make dyes and sell them and make money out of them in the United States.

Mr. CHOATE. By no means. The Chemical Foundation (Inc.) can never go into the dye-making business. If you will only let me tell you about it I will.

Mr. MOORE. All right, then, come to that.

Mr. CHOATE. The Alien Property Custodian seized the patents. The question was what was he going to do with them. We might have asked Congress to do as the British did, and annul the patents, which would have gotten them out of the way of the American manufacturer, who could not then have made all of these dyes. And what we have taken the title for—they were never taken out with any intent to manufacture here, because it was very evident the intent of the Germans in taking out these patents was to absolutely discourage manufacture here by the Germans. One American branch of the Bayer Co. started to make a few needed dyes in 1916, and the head office immediately wrote to them, scolding them bitterly and insisting that no further new operations be undertaken. These patents had been taken out as an obstacle primarily to importing, and, secondarily, as an obstacle to American manufacture, and they stood as an immutable obstacle.

Mr. MOORE: If that is true, leaving out the feelings of bitterness and hatred engendered by the war, the United States issued those patents, and if they were not taken out in good faith, we certainly accepted them in good faith.

Mr. CHOATE. I can not pass on the acts of the United States back for the last 17 years. It is not possible for me; I do not know why the United States issued the patents, and I doubt if any living man does.

Mr. OLDFIELD. I can explain that. The reason for that was that we have never had in our patent law a compulsory license or compulsory work clause as they had in other countries.

Mr. MOORE. That is true, but the patents were applied for, and the United States granted the patents for—17 years, I believe, is the period—just as they did in thousands of other cases where people did not work the patents after they had their right. It may be absolutely true, as Mr. Choate states, that they were not taken out in good faith, but we certainly issued them with our eyes open.

Mr. CHOATE. To resume; something had to be done with those patents. The only thing the Alien Property Custodian had the power to do, without further help from Congress, was to sell them. Now the universal practice of the Alien Property Custodian's office was to Americanize the seized companies as far as he could by selling their securities when found in German hands, to first-rate competent American purchasers.

Now it was obvious that the wisest thing for us to do was to sell to a good American purchaser. And what could we do? In the first place, they had to be sold in large blocks, because, if only two or three patents were sold to any individual purchaser, they would not be worth his while protecting. The expense of protecting an individual patent would be colossal and the possible results from two or three only would be so problematical, that to make sure those patents would be protected (and if not protected they would be a dead letter and they would lose the protection which the industry could have, for the patents in the hands of Americans could be used as a means of keeping out German dyes which they covered) we had to sell to a good American purchaser and we had to sell in large blocks. Now who could

we sell to; who was big enough to buy them? There were three or four concerns in the country. Any one of those concerns, if we sold all or half of those patents to it, would become a monopoly. We could not have that. You would have been among the first to disapprove it. On the other hand, we could not sell to a weak purchaser, because a weak purchaser could not protect them.

It was then that the fertile brain of Mr. Garvan, the present Alien Property Custodian, then in charge of the Bureau of Investigation, conceived the idea of getting an industrial organization to act as a trustee corporation to buy the patents. I was present at every detail of every one of the consultations that resulted in that organization, and I may say that from beginning to end the subject of politics was never raised. The organization was framed and every detail of it adopted without the slightest consideration by any man present of its political effect. It took the form it did for this reason; in the first place we had to get an organization that could never fall into the control of any one body, any one company, any one man, or any one group of men. For that purpose, we made the stock nontransferable without the consent of the company. It could not be controlled by any existing group of the industry, because if it was it could be used for the selfish purpose of some one group. For that purpose we provided that the whole stock must be placed in the hands of a voting trustee. Now we came to select the voting trustees. Who could we have? We had to have men who commanded the confidence of the community; we had to have men disassociated from either the producing or consuming industry. Where could we get them? Obviously they must come from the highest type of business men not connected with the industry. We had

to have men familiar with the German methods, German machinations. Where could we find them?

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Mr. CHOATE. At all events, there was a board I think we all respected and who had the confidence of the community and certainly knew the Germans and their works. We placed the common stock, which alone has the vote, in their hands for 17 years to cover the life of the existing patents.

Mr. MOORE. That was the reason for the 17 years?

Mr. CHOATE. That was the reason for the 17 years. We now provided for the usefulness of this concern and nobody has yet showed the slightest comprehension or touched it; but to us it was the vital part of it. It seemed to us likely that if these American industries got busy and began to manufacture under these patents, they would get very busy and we would have a large income coming into the Chemical Foundation. We saw in that possibility the chance of establishing an institute of research which would be in a position to coordinate the efforts of the universities and of the dye works in this country, as had been done in Germany. And we accordingly provided that after the retirement of the preferred stock, which is only $400,000, the whole income of this concern should be devoted to the advancement of science, and we have mapped out a comprehensive program for doing that which has met with the utmost enthusiasm all over the country, and we have received most enthusiastic offers of cooperation. Many of the largest works in the country have placed their laboratories at our disposal and, as I say, we have had offers of cooperation which seem to us to insure the certainty that this institution will go on and render

the public a service such as no other body in the country is able to render.

Among other public service, think of this: The charter permits the company to buy more patents. Take the case of the chemists in a laboratory like the color laboratory of the Department of Agriculture, where able research chemists work hard all day and turn out the most useful things and receive very small salaries. Now, when it comes to taking out patents, the regulations of the department require that the patents must be dedicated to the public use, so that those chemists do not profit by that work. Any other private inventor is obliged to go to one of the chemical concerns to sell his invention. Where does he stand with them; what chance does he have to get the value of the invention he has made? And so we shall offer in the Chemical Foundation as a possible purchaser for patents one of the greatest stimuli ever offered to chemical invention in this country.

Now, what is the Chemical Foundation bound by charter to do with these patents? It is to license on even and reasonable terms every competent 100 per cent American manufacturer up to, of course, the capacity of the market. Every manufacturer whether he is a stockholder of the Chemical Foundation or not can get a license under these patents.

Mr. MOORE. May I ask you what that means, that you are going to license only every 100 per cent American manufacturer? Suppose there is a manufacturer who is a Frenchman, or a Swiss, or a Bolivian, or a Canadian and he desires to start an industry in the United States; are you going to bar him and give him notice that he can not spend his money here?

Mr. CHOATE. Under our charter we can not license any corporation three-quarters of whose stock is not held by American citizens. I think that is a very

wise provision. We do not want ever again to get in a position of having our industries controlled by foreign corporations.

DEFENDANT'S EXHIBIT No. 142.

EXTRACTS FROM STATEMENT OF JOSEPH H. CHOATE, JR., BEFORE COMMITTEE ON FINANCE, U. S. SENATE, HEARINGS ON H. R. 8078.

In the first place, the dye industry makes a greater number of different products, I suppose, than any other industry in the world. Before the war one German factory produced 11,000 different colors. For the most part—and entirely, except as they are mixtures and adulterations and mere differences in strength—these colors are different individual chemical substances, as definite in constitution as the salt you put on your baked potato at luncheon.

Senator Watson. You say one factory made 11,000 different colors?

Mr. Choate. Eleven thousand.

Senator Watson. Fast colors?

Mr. Choate. I do not suppose they were all fast. I should be quite surprised if more than a few of them were.

There is no necessity anywhere, of course, for any such number of colors as that, but nine hundred and sixty odd were actually imported into this country before the war began. Of those 960 probably a large number were superfluous, but a very great number of products is necessary, because you must not only be able to make every conceivable shade—which you can always do by mixing—but you must provide for 13 or 14 different kinds of fastness; that is, fastness under 13 or 14 different sets of condi-

tions—washing, sunlight, chlorine, acids, perspiration, salt water, and many others. You must also be able to provide all your shades for every fabric, and each variety of fiber requires a different type of dye. A dye which will dye wool may not dye cotton at all. One that is suitable for either or both may fail altogether with silk. You must also be able to provide dyes which meet the requirements of mixed fibers. You must provide dyes for special purposes, such as printing, dyes which will take one fiber of a mixture and not the other, dyes on which a figure can be printed with a chemical which will drive out the dye—what is called "discharge printing," so as to produce a white or different colored pattern on the otherwise even shade of the material.

And so, to meet the requirements of those various degrees of fasteness and the various tints and different varieties of substance and for all the different varieties of manufacture, a vast number of different materials is required.

The process of making these dyes is exceedingly long and complicated, and it differs altogether from other manufacture in this respect—and this difference is one which I want you to store up in your minds and keep there throughout, if you will.

When you go to work to make automobiles, you buy so many tons of steel, so many tons of wood, so many tons of brass, and, with the exception of a certain fairly constant proportion of spoiled parts, you get back 100 per cent of your raw materials. That is the usual course of manufacturing, but when you start making dyes the situation is entirely different. You begin with your crudes, the 10 great products naturally present in coal tar. You mix one of those up, we will say, with an acid or two and various other reagents—I should not need to go into the technical phases of it, even if I knew them—and you start a

tremendous chemical reaction. Every substance you put into that reaction is destroyed, and a new set of substances is produced. Only one of those new substances, as a rule, is what you want for the next step.

The proportions that you get of the new products can be varied by skill. The type of skill is mainly not in the books; it can be learned only by prolonged experience. It is the skill not of the head chemist, who may be highly trained at a university; it is the skill of the small chemist or foreman who looks into the receptacle and sees a particular kind of bubbling and knows from that that the reaction has gone far enough and ought to be stopped or that something else ought to be done. His skill results in your getting in the first step a yield, as it is called, of somewhere near the theoretical possibility. A man who has not had those years of experience will carry on the reaction less perfectly, and the resulting yield will be very small.

Now, then, you take the new product which you have got as the result of that first step, and you may carry it through another set of reactions, and the resulting product must be carried through a third set of reactions. Often before you get the so-called intermediate you have carried it through half a dozen such processes. The intermediates, gentlemen, are nearly as complicated in manufacture in many cases as any other manufactures that exist in the whole world of commerce, and the making of dyes does not start till the manufacture of the intermediates is complete.

I have described the business of manufacture in this detail, because it is necessary for you to understand it in order to comprehend the enormous advantage which the Germans have over us at the start. That advantage, I think I can show you, is so great that, without any knowledge as to present conditions,

we can demonstrate that their costs must still be very much lower than our own. Consider the history of the German industry.

The German dye industry was started many years before ours. By 1880 the Hoechst factory, one of the largest three, employed 1800 men. That is within 63 men of as many as were employed by the largest American factory—that of the National Aniline Co., at Buffalo—in the month of October, 1919. That was in 1880. By the beginning of the war that concern was employing 8000 men and, as I say, making 11,000 colors.

But that was not the biggest one. Badische, sometimes referred to as Ludwigshafen, employed 11,000 men. It employs 16,000 men to-day. Bayer was as big as Badische; Berlin was nearly as big as Hoechst. Cassella and Kalle were smaller. Those were the big six.

The German industry started with an immense natural advantage of position. All the plants were developed within a district that you could almost put into a single one of our smaller States. All except Berlin are located along the Rhine and its tributaries, the Main and one other stream. There were to be found all the supplies that they needed close at hand with low transportation costs. There was to be found an extraordinary supply of cheap and docile labor, consisting largely of men who had no objection to spending their lives at one job and having their children brought up in it after them.

The German mind ran naturally to the sort of research which was required in the dye industry. The universities produced those men in great numbers. As Dr. Bogert told you, they reward research chemists not so much in salary—because their salaries were always low, so that their chemical service was cheap—but in social position, so that a man who has made dye

chemistry his life work in Germany became a pretty important personage and enjoyed life correspondingly.

From a very early day the importance of research was realized there. When you make thousands of different materials and in the course of making those different materials you produce tens of thousands of by-products, as you must, you have got to find a use for those by-products or run them into the sewer, and to keep those by-products out of the sewer and put their proceeds into the treasury was the constant and insatiable ambition of the research chemists. They were employed by hundreds, and, by the same token were bred by hundreds in the universities because the dye works provided jobs for them. Constantly they were engaged in devising new means of disposing of these by-products, working out their pharmaceutical effects as well as their possible uses in the dye business and in every other business. And in the course of those investigations they incessantly ran out of the field of the dye industry and into that of pure science.

While all this was going on our industry was standing still. We had quite a flourishing little industry in 1880. Between 1879 and 1883 nine quite flourishing concerns were developed and appeared to be going strong. Up to that time, of course, the German industry was still new. Prices were still very high. It was not an unfamiliar thing in those days to pay $30 a pound for a German dye that was not abnormally scarce. We had a tariff, if I am not mistaken, at that time that started with a 50 cents a pound specific. That seemed to be enough in those days. The industry was fairly promising.

That tariff was withdrawn in 1883. Instantly, of the nine concerns four went out of business, and from that day on the American industry continued to be a mere assembling industry, putting together, often by the simplest processes, intermediates which were them-

selves often the product of extraordinarily complicated manufacturing processes, intermediates which had been imported from Germany.

In the meantime the German industry began a process of combination, so that by the beginning of the present century it had practically all been combined into the six great companies that I have named. There were quite a number of very small assembling plants, which made specialties of some one particular variety or line of colors, and there were one or two outlying concerns which made colors, mostly as a side line. But the bulk of the industry was in the Big Six.

About 1910 they were further combined into two separate cartels; one which I always think of as the "Three B's"—Badische, Bayer, and Berlin; the other containing the other three—Cassella, Hoechst, and Kalle. By that time the Big Six had gained a substantial world monopoly. Ninety per cent of the dye production of the world was in their hands. The only substantial industry outside that was not almost entirely an assembling industry was the Swiss, which was very limited in scope, because there were no raw materials in Switzerland.

Now, what kind of people were the Big Six? That is the real question you have got to face. What is our industry up against? You have heard from various witnesses. Mr. Wigglesworth, for instance, has told you how as soon as American chemical industry in the production of anilin showed its head the German trust struck at it. He did not tell you how successfully they struck at it in that case. The Benzol Products Co. was actually forced to close its doors for a time. That is true, is it not, Mr. Wigglesworth?

Mr. Wigglesworth. Yes, sir.

Mr. Choate. And was only revived because of the outbreak of the war. The same thing happened in the case of salicylic acid. As soon as a promising

American manufacturer started, the Germans cut the price, first to take care of the duty, and then beyond that, until the American company went out of business, when instantly the price went up again.

The same thing happened with bicarbonate of potash; the same thing happened with half a dozen different intermediates that Schoelkopf had started making.

Throughout, the method of the German chemical industry has been to destroy all competitors, by underselling and by what Mr. Wigglesworth very aptly termed "selective attack." With their colossal industry they could and can afford to take a loss on any one thing or things, and it is to their inestimable advantage if, by spending a few hundred thousand dollars here and a few hundred thousand dollars there, they can cull out and destroy the promising plants in other countries. They did it systematically. They never missed a chance.

They did not have to do it in the dye industry itself. Our dye industry was not a menace to them. It was satisfactory to them to sell their intermediates to such assembling plants as we had here, knowing that those assembling plants could not develop into real dye-making plants until they chose to let them do so.

How was the rest of their commercial morality? One of their favorite practices was "full-line forcing." They had all the most desirable dyes. Nothing was simpler for them than to refuse to supply anyone who bought from a competitor, where there was a competitor, until he ceased to buy from the competitor. It could be done by a nod of the head without a word spoken, and it was done and done systematically. The man who would not buy all his supplies from the American representative of the Big Six, whom he patronized in chief, would find that he would not get any

supply at all of the particular things he felt he must have.

Beyond that—and here I do not want you to rely upon my investigation—the industry developed the most extraordinary mass of straight-out commercial corruption that I think was ever to be found in any industry in the country. The Germans practiced commercial bribery on an unparalleled scale.

Senator Watson. What do you mean by that, Mr. Choate?

Mr. Choate. I mean that in the case of almost every textile manufacturer in the country the dyers were subsidized by the German houses—actually paid to see that their dyes were used in preference to all others.

Senator Nugent. You mean the buyers or the textile manufacturers?

Mr. Choate. Not usually the buyers. It was ordinarily the dyer, the man who applies the dye to the goods. The dyer is the only man in the place, as a rule, who knows that branch of the business. All he has to do is to tell his boss that the dye he has got is no good, and the boss goes off and buys something else. If, by chance, the boss has faith in the dye and questions his statement, all that is necessary is for the dyer not to raise the temperature of the bath up to quite the proper point, or to put in a little bit too much of this, or not quite enough of that, and then go to the boss with the spoiled goods and say, "I told you so."

On this point—I am not going to ask you to rely on my authority—an extensive investigation was undertaken——

Senator Nugent. One moment. Do you mean to give us to understand that the confidential employees of the textile manufacturers were actually bribed to do those things by the Germans?

Mr. Choate. Actually bribed, and so much as a matter of course that it was almost without exception true. I came across only one mill where they had completely eradicated it, and in that case the owner of the mill bought all the dyes himself and removed all marks from the packages before they were turned over to the dyer.

An investigation was conducted in Philadelphia at the instance of a number of woolen manufacturers back in 1913. There was rather a curious situation. They developed this graft at considerable length. Counsel for the people doing the investigating were Mr. Deming, who sits here at the table, and Mr. C. H. Burr, who is, I think in the room. I have not the honor of his acquaintance, but I think he is here representing, strangely enough, the opponents of this bill. I want to read to you from an article of Mr. Burr's in the July (1919) number of the Quarterly Review.

Mr. Burr. I am Mr. Burr. I wish to say, Mr. Chairman, I do not appear here in any regard except my own general interest in the subject.

Mr. Choate. I am very glad to hear that, Mr. Burr. I desire to read briefly from this article [reading]:

GERMAN BUSINESS IN THE UNITED STATES

The methods of German commerce in prewar days are familiar in their general outline; the concrete details have not often come to light. This article will endeavor to give the story of how the German dye combination operated in the United States. The account will be given as far as possible in the words of witnesses taken under oath. These accounts, commented on only for the sake of clarity, should be allowed to speak for themselves.

During the war the dye industry in Germany was united into one great chemical verein, so that the gen-

tle methods hitherto used might become universal and gain completeness of organization and efficiency after the war, when England and the United States should open again their hospitable doors. Before the war, however, there were six leading German dye houses, divided into two groups of three each. The first group consisted of the Badische Anilin-und-Soda Fabrik (called for short the Badische Co.), the Farbenfabriken vormals Friedrick Bayer & Co. (called the Elberfeld or Farbenfabriken Co.), and the Aktiengesellschaft fur Anilin-Fabrikation (known as the Berlin Co.). These three companies pooled their profits in the respective proportions of 43 per cent, 43 per cent, and 14 per cent. They were controlled by a cartel and met for fixing prices, determining policy, etc. The second group consisted of Farbwerke vormals Meister, Lucius and Brunner (known as the Hoechst Co.); Leopold Cassella & Co.; and Kalle & Co. These three concerns were knit together rather more loosely than the first combination, and their unity of action depended mostly on interchange of share capital.

About two years before the war an internal difference manifested itself when the accounts for the preceding year were presented to the pool. The Elberfeld Co. claimed an allowance of something like $700,000 for "graft" payments made in the United States. The other partners objected to the amount, not because they were ultraconscientious, nor because the amount, if really expended, was excessive, but because vouchers were not presented with ideal German completeness; and the notion seems to have been suggested that foreign agents and managers might have made an error in the calculation, resulting in unintended personal benefit. However this may be, a little private investigation was made by one company in order to ascertain whether the dyers and ultimate

recipients of the "graft" were really getting what they were entitled to. The investigation, as will happen sometimes with the best-regulated inquiries, got a little out of bounds. The result was a series of suits and a general explosion of indignation. From the evidence collected under oath in the inquiry, the following excerpts have been made. It should be noted, in order to reassure the British reader, that the convention called under the cartel entered on its minutes the following resolution:

"*Resolved,* That henceforth bribery shall be abolished, except in the United States and in Russia."

Senator Watson. Who was it that passed that resolution?

Mr. Choate. That was a resolution, according to Mr. Burr, of one of the two great German cartels which he was investigating.

Senator Watson. How did he happen to be investigating this?

Mr. Choate. He was retained by a group of woolen men in Philadelphia, who were determined to stamp out graft of this very kind in their industry. He was retained to investigate and attack the grafters, as was Mr. Deming with him. I have been informed, I believe correctly, that there was a very curious and interesting feature in connection with this retainer. I understand that 40 per cent of the expense of the investigation was met by the persons who originally started it, the textile men who wanted the graft driven out, and 60 per cent of it, I am informed, was met by Messrs. Kuttroff and Pickhardt, the American agents of the great German Badische Co.

That investigation took place immediately after the divorce which took place between the Badische Co. and the Bayer Co., which, in 1910, attempting to carry

the German combination still further than it had theretofore been carried—there were still two cartels—had formed one agency, called the Continental Color & Chemical Co. of New York, but had quarreled through one year and then dissolved the joint undertaking. It was after that dissolution when they were again gunning for each other's business that these American agents of the Badische put up 60 per cent of the expense of this investigation, apparently in order to "get" their competitor, the Bayer Co., which was specially open to attack on this score.

Senator Watson. You say they put up 60 per cent of the money to investigate that question?

Mr. Choate. I am so informed. It is of no particular consequence. It is merely an interesting sidelight on it.

Senator Watson. When was this?

Mr. Choate. In 1913, I think. That is right, is it not, Mr. Deming?

Mr. Deming. About that, I think.

Mr. Choate (reading):

The operations of the Dye Trust in the States can best be examined in the words of the witnesses themselves. In explanation, it may, however, be added that these companies maintained their American agencies under their own control; that the Elberfeld Co., which had expended the $700,000, was extremely active among the mills in Philadelphia; and that Mr. Keppelman was its manager. For convenience, the evidence will be grouped, first, with reference to the bookkeeping methods of handling the matter, adopted to secure, so far as possible, proper profits and proper accounting to the principals in Germany; second, the distribution of "graft"; and thirdly, certain incidental activities, such as chemical means of dealing with rivals, and persuasive invitations on board a yacht.

With respect to bookkeeping methods, the problem was a difficult one. It was desirable to secure large prices for the dyestuffs sold, so as to afford a margin for "graft" and allow of proper accounting in addition. It was obvious that this must be done not only by adulteration but by misbranding the goods so that comparisons in prices would be rendered impossible and awkward disclosures would be avoided. A system, therefore, based on selling the same thing to A by one name and to B, C and D by different names, on allowances for different degrees of adulteration and on keeping accurate accounts so that the dyers should receive the correct amounts of "graft," would necessarily be complicated, especially since care had to be taken that each party should see only what it was desirable he should see.

Then he goes on with the affidavits, which are so detailed that I will not read them here, though I should like to have them inserted in the record. I will read, however, just briefly from one of them. He is speaking now of these substitutions, palming off substitutes on the unfortunate textile men by bribing their dyers. [Reading:]

I remember one particular dyestuff of which the D firm bought a good deal—"Brilliant black BB." This was a fictitious name given to naphthylamine black 4BK. The market price of the latter color was 21 cents, yet under its fictitious name D was paying 85 cents a pound, and they used a good deal of it; at least three to five hundred pounds each week. On my order blank I would insert on the first column one keg or barrel, as the case might be, of brilliant black BB; in the next column the correct or trade name of the color—that is, naphthylamine black 4BK—so that the shipper would know exactly what to send D, though they would not know the exact nature of the color

they were getting, thinking they were using a high-priced dye when in reality it was a cheap one.

The essence of that system was just that. Whenever it was necessary to cover the graft and get the profits back all they did was to adulterate a product and call it by a new name and then they were able to sell for 85 cents what under its proper and well-known name they had only been able to sell for 21 cents.

Gentlemen, that is the kind of people the German dye trust were and are to this day.

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Mr. Choate. I am not willing to concede that for one minute.

Senator Watson. Well, we are not going to try that case.

Mr. Choate. You are not going to try that case. But it is material, because you are dealing here with the question of what the American industry can do against the German industry, and what that is depends largely on what kind of people the German dye trust consists of.

Since the war began the German Big Six and the two cartels composed out of that Big Six in 1910, have been combined into one gigantic whole, known as the I. G. That is practically a single corporation. The subsidiary corporations keep their corporate entity, but they are entirely in the hands of one man, the chief of the cartel for the time being, who happens to be for the present Herr von Weinberg, of the Cassella Co. The companies exchange information. They contribute to the expense of foreign campaigns against competitors. They share profits. They have recently doubled their capital. Mr. Wigglesworth has told you that, owing to the German method of finance, their capitalization conceals rather than exaggerates the

actual amount of their assets. Their nominal capitalization is to-day over one billion marks. Their stock is sold on the Berlin Stock Exchange to-day at an average of 400, so that that capitalization represents real assets of half a billion dollars at least, probably more. They have got that at stake.

Until the outbreak of the war they had a world market. They were organized, and their plants were constructed to make things on a colossal scale. You know without my having to state it that when you are organized to make the entire consumption of the world in any given article you cannot cut your production down by even as much as one-quarter without gravely interfering with the efficiency of your production. Their industry was the most remunerative in the German Empire. The dividends of these companies for years before the war averaged 22 per cent. The Badische Co. held a meeting in July, 1919, and declared a 12 per cent dividend. They were the favorite war babies of the German Empire. They made all the poison gases. They have kept their staffs and labor together, and they have spent vast sums on plants since the armistice. Dr. Herty, who has just been there, and others will tell you about what they are doing now.

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Senator Watson. I want to ask you a question or two. We will take up that matter later on. I wish you would tell me about the organization of the Chemical Foundation.

Mr. Choate. I would be very glad to. I went into the office of the Alien Property Custodian to investigate the chemical industry in the very early spring of 1918. We had not been at it long before we discovered the importance of the dye industry, and we

had not been studying the dye industry long before we discovered the importance of the patents there as an obstacle to American progress. We found that very large numbers of patents in the dye field had been taken out by the Germans and had never, I think, in any single instance, been used.

Senator Curtis. In this country?

Mr. Choate. Yes, sir. They had been taken out, in other words, simply and solely to prevent the existence of competition in the products of those patents. Many of the patents were product patents, and some process patents. They covered all the later and most desirable dyes. Most of the indigo patents had lapsed, but the production in all of the later varieties of anthracene colors, which were the most fashionable for the moment among the dye industry, were covered, as well as innumerable pharmaceuticals and other things useful in the industry. We came to the conclusion on studying the situation——

Senator Nugent (interposing). Who do you mean by "we"?

Mr. Choate. I mean I and the other people connected with the office of the Alien Property Custodian, and in all this thing I was very closely associated with Mr. F. P. Garvan and Mr. Ramsay Hoguet, who was also working with us handling patent matters for the Alien Property Custodian. I will state that both Mr. Ramsay Hoguet and myself are lifelong Republicans. We came to the conclusion that the patents had been taken out——

Senator Watson (interposing). You say there were a great number of patents taken out in this country, Mr. Choate, that were not used in the United States at all?

Mr. Choate. Had never been used at all; no use of them had been made.

Senator Watson. Had any dye manufacturer in this country attempted to use any of those patents?

Mr. Choate. No; because they were owned by the Germans, and it was assumed, I suppose, that no licenses could be obtained. I can not imagine anybody being so mad as to ask any of the Big Six for a license to make one of their dyes in this country.

Senator Watson. Were these patents owned by the Big Six altogether?

Mr. Choate. Almost exclusively. I do not mean to say that all of the patents taken over by the Chemical Foundation were owned by the Big Six, but the dye patents we are now interested in were owned practically exclusively by the I. G.—the German dye trust.

Senator Watson. How long have these patents been in existence?

Mr. Choate. Some were nearly expiring, some had just been taken out, and there were lots of applications that had not been granted.

Senator Watson. Had they covered every kind of dyes?

Mr. Choate. By no means; they covered about one-fifth of the annual import before the war in value.

Senator Watson. What was the import before the war?

Mr. Choate. I think something like 45,000,000 pounds, or about $12,000,000 worth in import value, and probably about $20,000,000 by the time it got to the consumer.

Senator Watson. Oh, no; you must be wrong about that.

Mr. Choate. 29,000 short tons, or 58,000,000 pounds as stated in the Norton census. That, however, is the total American consumption, which includes Swiss importation and the American production of 8,000,000 pounds.

Mr. Wigglesworth. Indigo and alizarin were included in that?

Mr. Choate. Yes.

Senator Watson. So that these patents covered, you say, about one-twelfth of that quantity—did you not make that statement.

Mr. Choate. No; I should think they covered—I should not like to say now—but it is not above one-fifth either in value or quantity, and I think it is not above one-fifth in value.

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It therefore seemed to me absolutely necessary that somebody should do something about it. No one in the country, except ourselves in the Alien Property Custodian's office, knew anything about the situation, outside of the persons whose business was directly affected. Accordingly, it seemed to us that it was up to us to do something about it as public-spirited citizens. We were the only impartial persons whose pockets were unaffected by anything that might be done, who were in a position to do anything. Accordingly we got busy. An amendment was secured to the trading-with-the-enemy law which permitted the taking over of the patents. Up to that time no conception of what was finally done had been arrived at; the idea had not been thought of.

The thing was to get the patents out of the German hands, and decide what should be done with them later. They had been partially available to the American industry under the trading-with-the-enemy act which permitted the Federal Trade Commission to license applicants under them, but the regulations were such that the man who took a license from the Federal Trade Commission bought a lawsuit with it, did not know how long his license would last, and had to pay

an indeterminate rate of royalty, at first at 5 per cent and then at such rate as might be determined by a court. So that nothing was really done under those Federal Trade Commission licenses except the manufacture of certain pharmaceuticals which were peculiarly necessary. Then, the patents having been taken over, the question arose, what was to be done with them? And there we faced a most difficult problem. There was no department of the Government to which they could be turned over; there was no department of the Government that had power to take them in hand. We did not seem to be able to create any great amount of interest in anybody about creating any such department of the Government.

England and France had annulled the German patents—England had at any rate, and I think France had; and while thus opening the market to their own manufacturers had also opened the door to German competition after the war. It seemed to us that probably something better could be done with them than that. The alternative seemed to be to sell them to a good American purchaser. But how were we going to do that; how could it be done; could the Alien Property Custodian do it without doing more harm than good?

These patents could not be sold singly. Probably 90 per cent of them were absolutely worthless—I suppose 90 per cent of most patents are worthless. They had to be sold in groups to be worth anybody's while, and had to be sold in fairly large groups; for if they were not worth defending they would do more harm than good. If they were sold in groups of any size they would have to be bought by pretty strong purchasers, if they were to be of any use in keeping German products out in favor of American products. Accordingly, the type of purchaser who would have to buy them, if they were to do any good to the coun-

try, had to be pretty strong. If we sold these patents to an important American manufacturer in groups of any size, he would become a monopolist *ad hoc;* he would be able to dominate one considerable section of the dye industry, and his domination might readily extend far beyond the field of the particular number of colors, covered by his patents.

Before it was decided what should be done with these patents, it so happened that the Bayer Co., the American branch of the one German concern of the Big Six that had any considerable plant in this country—came up for sale and was sold, and with the property thus sold passed, by the sale of the stock, the Bayer patents, which were not held in the name of the German Bayer Co., but were owned by one of its American subsidiary corporations, so that they as patents had never been taken over. As soon as that had happened——

Senator Watson (interposing). How is that? I did not get that.

Mr. Choate. The Bayer patents, 1,200 in number, covering one very valuable group of vat dyes and many pharmaceuticals—among others, the aspirin patent, I think—were owned by an American subsidiary corporation of one of the German Big Six, of which the German company owned all of the stock. So that when the German-held stock of that American corporation was sold, the patents practically went with it to the new purchaser. The purchaser was the Graselli Chemical Co., a very large manufacturer of general and heavy chemicals. The Alien Property Custodian was immediately deluged with protests against the sale of such a mass of patents to an important manufacturer, who might become a monopolist to a mild extent by virtue of the possession of those patents. This brought it to the attention of everybody concerned that the sale of these patents was even a more

difficult thing than we had thought it was. Accordingly, everybody set to thinking for all he was worth to see what could be done. The solution was finally found by Mr. Garvan.

Senator Watson. You said a while ago that in your judgment 90 per cent of the patents were absolutely worthless.

Mr. Choate. I made that statement about patents in general, and that was the opinion of Mr. Hoguet as to these paents.

Senator Watson. If those patents were 90 per cent worthless, what difference did it make what became of them?

Mr. Choate. Because nobody knew which were good and which were bad.

Senator Watson. Then, how did they know they were 90 per cent worthless?

Mr. Choate. Because in almost every large group of patents of that sort——

Senator Watson (interposing). You are just generalizing?

Mr. Choate. It is the experience that 90 per cent are worthless, and it is the judgment of the chemists and chemical engineers here that of these probably a very small proportion are of value. I do not think you will find that questioned by any one.

Senator Watson. I imagine that is true. We have been told while investigating the dye question that a given process sometimes falls down because of leaving out an important step.

Mr. Choate. I did not mean that. I mean that the patents covered products or processes which were no good when you got them.

Senator Watson. I was going to state, secondly, which were no good when you got them.

Mr. Choate. I am leaving out of account for the

moment the question of defect in the patent as a description of the thing which is to be done.

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We felt if that could be done and that corporation could be so tied up by its charter provisions that the stockholders could never make any money and that its officers could never make any money, and that the patents would have to be licensed to American manufacturers on even terms, so that the whole industry could avail itself of them, whether members of the corporation or not, then we should have a purchaser that would do good and not harm.

Senator Watson. That is to say, take over all the German patents—4,000 of them, you say?

Mr. Choate. There were about 4,000.

Senator Watson. And after that to take over all American patents hereafter issued?

Mr. Choate. Oh, no.

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He (Mr. Garvan) took the office on condition that he serve without compensation, and he served entirely without compensation, as do the other executive officers. And the charter provides that except for a 6 per cent return on the preferred stock—which is to be retired as fast as it can be—and a dividend limited to 6 per cent on the common stock if earned, the entire funds produced by the Chemical Foundation must be used for purposes of the advancement of science and industry in the United States.

DEFENDANT'S EXHIBIT No. 143.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of an instrument of writing

Recorded April 10, 1919,
in
Liber G-107, page 48 of Transfers of Patents.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of (Seal) Washington, this 3rd day of July in the year of our Lord, one thousand nine hundred and twenty-three and of the Independence of the United States of America the one hundred and forty-seventh.

(Sgd.) WM. A. KINNAN,
Acting Commissioner of Patents.

G. 107. p. 48.

ASSIGNMENT.

WHEREAS, A. MITCHELL PALMER, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act" approved October 6, 1917 and the amendments thereto and the Executive orders and proclamations issued in pursuance thereof, under and by virtue of his authority as Alien Property Custodian, and in accordance with demands duly made, is now vested with all properties in the United States

of America, of Gesellschaft fur Drahtlose Telegraphie, m.b.H. of Berlin, Germany; and

WHEREAS, said Gesellschaft fur Drahtlose Telegraphie, m.b.H. heretofore entered into an agreement with Atlantic Communication Company, a corporation duly organized and existing under the laws of the State of New York, and having a place of business in the Borough of Manhattan, City, County and State of New York, said agreement being evidenced by a certain instrument in writing dated February 21, 1913, and duly executed by the parties thereto on December 12, 1913 and also by certain instruments in writing supplemental thereto which are enumerated in Schedule A, hereto annexed and made a part hereof, whereby the said Gesellschaft fur Drahtlose Telegraphie, m.b.H. granted to said Atlantic Communication Company, certain rights under any and all letters patents of the United States which it then owned or controlled, and which it might thereafter own or control; and whereby said Atlantic Communication Company covenanted to do certain acts and things for the benefit of said Gesellschaft fur Drahtlose Telegraphie, m.b.H.; and

WHEREAS, said Gesellschaft fur Drahtlose Telegraphie, m.b.H., heretofore owned a certain trademark "Telefunken", certain letters patent of the United States and certain inventions and applications for letters patent of the United States therefor, including the letters patent, inventions and applications for letters patent enumerated in Schedule B hereto annexed and made a part hereof;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, BE IT KNOWN, that for and in consideration of the sum of five hundred dollars ($500.00), to him in hand paid by the United States of America, represented by the

Secretary of the Navy, before the signing and delivery of these presents, receipt of which is hereby acknowledged, the said A. Mitchell Palmer, as Alien Property Custodian, agrees to and hereby does sell, assign, transfer and set over to the United States of America, represented by the Secretary of the Navy:—

First, the entire right, title and interest formerly held by Gesellschaft fur Drahtlose Telegraphie, m.b.H., in, to and under said agreement of February 21, 1913 and all agreements supplemental thereto enumerated in Schedule A hereto annexed, together with the entire

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beneficial interest formerly held by said Gesellschaft fur Drahtlose Telegraphie, m.b.H., in said agreements; the same being now vested in the said A. Mitchell Palmer, as Alien Property Custodian;

Second, the entire right, title and interest in and to said trademark "Telefunken" together with the good will and business appurtenant thereto; and

Third, the entire right, title and interest formerly held by said Gesellschaft fur Drahtlose Telegraphie, m.b.H., now vested in the said A. Mitchell Palmer, as Alien Property Custodian, in and to any and all letters patent of the United States inventions and applications for letters patent of the United States therefor; and all letters patent, inventions and applications for letters patent therefor which are or were subject to the provisions of said agreement with Atlantic Communication Company; including the letters patent, inventions and applications for letters patent, inventions and applications for letters patent therefor, enumerated in Schedule B hereto annexed; together with all damages and profits which said Gesellschaft fur Drahtlose Telegraphie, m.b.H. might have been entitled to recover

at law or in equity from any person, firm, corporation or government for past infringement of said letters patent.

To Be Held and Enjoyed, by the United States of America, represented by the Secretary of the Navy, to the full end of the term of said agreement and to

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the full ends of the terms for which any and all letters patent have been or may be granted, as fully and completely as the same could have been held and enjoyed by said A. Mitchell Palmer, as Alien Property Custodian, or by said Gesellschaft fur Drahtlose Telegraphie, m.b.H. had no sale or assignment thereof or demand therefor, been made.

And said A. Mitchell Palmer, as Alien Property Custodian, hereby covenants for himself, and his successors in office, that he will execute without further consideration, any further lawful documents, any further assurances that may be deemed necessary by counsel for the United States of America, represented by the Secretary of the Navy, fully to secure to and vest in said United States of America, represented by the Secretary of the Navy, the rights, titles, privileges and advantages hereby sold, assigned, transferred and set over or intended so to be.

And said A. Mitchell Palmer, as Alien Property Custodian, hereby requests the Commissioner of Patents to issue any and all letters patent which may be granted upon the applications enumerated in Schedule B to the United States of America, represented by the Secretary of the Navy, in accordance with this assignment.

In Witness Whereof, said A. Mitchell Palmer, as Alien Property Custodian, has duly executed these

presents and hereto affixed his seal of office this 6th day of February, 1919.

A. MITCHELL PALMER,
Alien Property Custodian.

Alien Property Custodian
United States of America
Approved for execution RH.

Witness:
T. S. PLACE

—4—

DISTRICT OF COLUMBIA) ss:

On this 6 day of Feby. 1919, before me came A. MITCHELL PALMER, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the Trading with the Enemy Act approved October 6, 1917 and the Executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing release, as the Alien Property Custodian, as aforesaid.

ODEN B. GRAY,
Notary Public.

Oden B. Gray
Notary Public
District of Columbia

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SCHEDULE "A"

List of License Agreements between Gesellschaft fur Drahtlose Telegraphie, m.b.h. and Atlantic Communication Company Supplemental to the Principal Agreement dated February 21, 1913, and executed December 12, 1913.

No. 1. Agreement dated, April 6, 1914, not recorded.

No. 2. Agreement dated April 6, 1914, not recorded.

No. 3. Agreement dated April 14, 1914, not recorded.

No. 4. Agreement dated, August 27, 1914, not recorded.

No. 5. Agreement dated, Dec. 14, 1915 and recorded in the United States Patent Office February 12, 1916, in Liber C99, page 306 of Transfers of Patents.

No. 6. Agreement dated Dec. 15, 1915, and recorded in the United States Patent Office February 12, 1916, in Liber H99, page 304 of Transfers of Patents.

No. 7. Agreement dated, Feb. 7, 1916, and recorded in the United States Patent Office June 10, 1916 in Liber K100, page 250 of Transfers of Patents.

No. 8. Agreement dated Jun. 29, 1916, and recorded in the United States Patent Office July 6, 1916, in Liber P100, page 324 of Transfers of Patents.

No. 9. Agreement dated, July 11, 1916, and recorded in the United States Patent Office, Sept. 7, 1916, in Liber M100, page 462 of Transfers of Patents.

No. 10. Agreement dated, July 11, 1916, and recorded in the United States Patent Office, Aug. 29, 1916, in Liber W100, page 478 of Transfers of Patents.

No. 11. Agreement dated Nov. 24, 1916, not recorded.

No. 12. Agreement dated Nov. 24, 1916, not recorded.

SCHEDULE "B"

LETTERS PATENT OF THE UNITED STATES

No.	Date of Issue	Inventor	Title
623,316	Apr. 18, 1899	Thomas B. Kinraide	Induction Apparatus
623,317	Apr. 18, 1899	Thomas B. Kinraide	Electrical Breaks
623,318	Apr. 18, 1899	Thomas B. Kinraide	Electrical Spark Gaps

No.	Date of Issue	Inventor	Title
783,992	Feb. 28, 1905	Andre Blondel	Wireless Telegraphy by Electric Waves
783,923	Feb. 28, 1905	Andre Blondel	Wireless Telegraphy by Electric Waves
824,682	June 26, 1906	Andre Blondel	Methods of Practicing Wireless Telegraphy
743,056	Nov. 3, 1903	Ferdinand Braun	Wireless Telegraphy.
744,897	Nov. 24, 1903	Ferdinand Braun	Means for Directing Electric Waves for Use in Wireless Telegraphy
750,429	Jan. 26, 1904	Ferdinand Braun	Wireless Electric Transmission of Signals Over Surfaces.
763,164	June 21, 1904	Johannes Donitz	Apparatus for Determining the Length of Waves and Observing the Oscillations in Electric Oscillation Systems.
763,345	June 21, 1904	Ferdinand Braun	Means for Tuning and Adjusting Electric Circuits.
776,337	Nov. 29, 1904	Leonid Mandelstam and Hermann Brandes	Wireless Signaling System
776,380	Nov. 29, 1904	Ferdinand Braun	Method of Producing Quick Electrical Oscillations of Different Phases
790,179	May 16, 1905	Ferdinand Braun	Wireless Telegraphy
790,250	May 16, 1905	Ferdinand Braun and Ragnar Rendahl	Apparatus for Increasing the Discharge Energy of Electrical-Vibration Systems
797,169	Aug. 15, 1905	Ferdinand Braun	Space Telegraphy
797,544	Aug. 15, 1905	Ferdinand Braun	Space Telegraphy

No.	Date of Issue	Inventor	Title
813,914	Feb. 27, 1906	Ragnar H. Rendahl	Wireless Electric Signaling System
820,169	May 8, 1906	Georg Von Arco	Resonance-Circuit
820,258	May 8, 1906	Ragnar H, Rendahl	Detector for Electromagnetic Waves or the Like
828,864	Aug. 14, 1906	Wilhelm Schloemilch	Receiver for Wireless Telegraphy
851,336	Apr. 23, 1907	Georg Von Arco	Transmitter for Wireless Telegraphy
883,437	Mar. 31, 1908	Leonard D. Wildman	Receiver for Space Signaling Systems
936,258	Oct. 5, 1909	Wilhelm Schloemilch	Receiver for Space Telegraphy
958,181	May 17, 1910	Wilhelm Schloemilch	Receiver for Wireless Telegraphy
958,209	May 17, 1910	Georg Von Arco	Portable Station for Wireless Telegraphy
959,100	May 24, 1910	Georg Von Arco	Aerial Conductor Arrangement for Wireless Telegraphy
962,262	June 21, 1910	Wilhelm Schloemilch and Paul Fernand Pichon	Wave-Detector for Wireless Telegraphy
994,426	June 6, 1911	Ragnar H. Rendahl	Receiver for Wireless Telegraphy
1,003,210	Sept. 12, 1911	Wilhelm Schloemilch and Paul Fernand Pichon	Wave Detector for Wireless Telegraphy
1,003,374	Sept. 12, 1911	Wilhelm Schloemilch and Paul Fernand Pichon	Wave-Detector for Wireless Telegraphy
1,003,375	Sept. 12, 1911	Wilhelm Schloemilch and Paul Fernand Pichon	Wave-Detector for Wireless Telegraphy
1,005,471	Oct. 10, 1911	Ragnar H. Rendahl	Antenna
1,014,722	Jan. 16, 1912	Ragnar H. Rendahl	Means for Varying the Period of Oscillation of Two Oscillatory Circuits

No.	Date of Issue	Inventor	Title
1,051,744	Jan. 28, 1913	Alexander Meissner	Spark-Gap for Impulse Excitation.
1,052,849	Feb. 11, 1913	Wilhelm Schloemilch and Paul Fernand Pichon	System of Radiotelephony
1,061,717	May 13, 1913	Georg Von Arco	Arrangement for Producing Electrical Oscillations
1,067,851	July 22, 1913	Adolf Wasmus	Means for Producing Rontgen Rays
1,077,733	Nov. 4, 1913	Alexander Meissner	Means for Producing Slightly-Damped Oscillations by Shock Excitation
1,082,221	Dec. 23, 1913	Georg Von Arco	Radiotelegraphic Station.
1,087,126	Feb. 17, 1914	Bedrich Macku Leonid Mandelstam and Nicolaus Papalexi	Arrangement for Producing Slightly Damped Electrical Oscillations.
1,087,892	Feb. 17, 1914	Wilhelm Schloemilch and Otto Von Bronk	Means for Receiving Electrical Oscillations
1,131,187	Mar. 9, 1915	Georg Von Arco	Self - Inductive Means for Electrical Oscillatory Circuits.
1,135,604	Apr. 13, 1915	Alexander Meissner	Process and Apparatus for Determining the Position of Radiotelegraphic Receivers.
1,148,279	July 27, 1915	Georg Von Arco and Ragnar H. Rendahl	Self Inductive Means for Electrical Oscillatory Circuits
1,151,824	Aug. 31, 1915	Gustav Reuthe	Electric Condenser
1,162,830	Dec. 7, 1915	Georg Von Arco and Alexander Meissner	System for Signaling by Wireless Telegraphy Under the Quenched-Spark Method.

No.	Date of Issue	Inventor	Title
1,163,180	Dec. 7, 1915	Wilhelm Schloemilch and August Leib	Means for Strengthening Weak Electrical Impulses
1,169,676	Jan. 25, 1916	Paul Fernand Pichon and Alexander Meissner	Frequency-Converter
1,170,552	Feb. 8, 1916	Alexander Meissner	Means for Producing Alternating Current by Cathode-Ray Tubes
1,175,472	Mar. 14, 1916	Ragnar H. Rendahl	Coupling for Electrical Oscillation Circuits
1,175,489	Mar. 14, 1916	Georg Von Arco and Ragnar H. Rendahl	Self-Inductive Means for Electrical Oscillatory Circuits
1,178,890	Apr. 11, 1916	Georg Von Arco August Leib and August Frey.	Radiotelegraphy-Station
1,180,075	Apr. 18, 1916	Paul Fernand Pichon	Production and Detection of Electric Oscillations.

1,181,556	May 2, 1916	Georg Von Arco and Alexander Meissner	Means for Producing High-Frequency Currents
1,186,654	June 13, 1916	Adolf Franke	Means for Producing Phase-Shifted Oscillations in a Plurality of Independent Oscillation-Circuits
1,210,540	Jan. 2, 1917	Hans Rukop and Wilhelm Schloemilch	Cathode-Ray Tube
1,214,591	Feb. 6, 1917	Gustav Reuthe	Antenna for Radiotelegraph Stations.
1,214,620	Feb. 6, 1917	Georg Von Arco and Alexander Meissner	Means for Producing Electrical Oscillations with the Aid of an Auxiliary Oscillation-Circuit.

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No.	Date of Issue	Inventor	Title
1,216,538	Feb. 20, 1917	Georg Von Arco and Ragnar H. Rendahl	Means for Producing Electrical Oscillations
1,267,018	May 21, 1918	Georg Von Arco and Alexander Meissner	Transmitting Apparatus for Wireless Telegraphy and Telephony

APPLICATIONS FOR LETTERS PATENT OF THE UNITED STATES.

Ser. No.	Filing Date	Inventor	Title
811,366 Renewed	Jan. 10, 1914	Georg Von Arco and	Connections for Electrical Relays
242,891	July 1, 1918	Alexander Meissner	Working with an Ionized Gas Gap
683,530	Mar. 13, 1912	Wilhelm Schloemilch	Wave Detectors.
99,792	May 25, 1916	Gustav Reuthe	Antenna Arrangements for Wireless Signaling or the Like
99,793	May 25, 1916	Gustav Reuthe	Method for Controlling Wireless Telegraph Transmitters.
738,864 Renewed	Dec. 27, 1912	Georg Von Arco and	Stations for Wireless Telegraphy and Telephony
239,496		Alexander Meissner	
76,328	Feb. 2, 1916	Walter Dornig	Generator for High - Frequency Currents for Wireless Telegraphy and Telephony
84,110	Mar. 14, 1916	Ferdinand Braun	Cathode-Ray Tube Receivers

156,894	Mar. 23, 1917	Georg Von Arco and Alexander Meissner	Transmitting Apparatus for Wireless Telegraphy and Telephony
156,895	Mar. 23, 1917	Georg Von Arco and Alexander Meissner	High - Frequency Generator for Telegraphy and Telephony

Ser. No.	Filing Date	Inventor	Title
825,188	Mar. 16, 1914	Altxander Meissner	Production of Waves by Cathode-Ray Tubes.

Recorded April 10, 1919. 2938.

DEFENDANT'S EXHIBIT No. 144.

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of an instrument of writing

Recorded April 10, 1919,
in
Liber U-106, page 395 of Transfers of Patents.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this 3rd day of July in the year of our Lord, one thousand nine hundred and twenty-three and of the Independence of the United States of America the one hundred and forty-seventh.

(Seal)

(Sgd.) WM. A. KINNAN,
Acting Commissioner of Patents.

U. 106. p. 395.

ASSIGNMENT.

WHEREAS, A. MITCHELL PALMER, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the

Trading with the Enemy Act, approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, under and by virtue of his authority as Alien Property Custodian, and in accordance with demands duly made, is now vested with all of the right, title and interest of certain letters patent of the United States, enumerated in Schedule A. hereto annexed and made a part hereof;

Now, Therefore, to All Whom it May Concern, be it Known, that for and in consideration of the sum of one thousand one hundred and ninety dollars ($1190.00) to him in hand paid by the United States of America, represented by the Secretary of the Navy, before the signing and delivery of these presents, receipt whereof is hereby acknowledged, said A. Mitchell Palmer, as Alien Property Custodian, agrees to, and hereby does, sell, assign, transfer and set over to the United States of America, represented by the Secretary of the Navy, the entire right, title and interest in and to said Letters Patent enumerated in Schedule A hereto attached, together with all damages and profits recoverable at law or in equity from any person, firm, corporation or government, other than that

of the United States of America, for the past infringement thereof; and the said A. Mitchell Palmer, as Alien Property Custodian, hereby releases and forever discharges the United States of America of and from all claims and demands on account of infringements of said letters patent prior to the date hereof.

To be Held and Enjoyed by the United States of America, represented by the Secretary of the Navy, to the full end of the terms of said letters patents as fully and completely as the same could have been

held and enjoyed by the said A. Mitchell Palmer had no sale or assignment thereof been made.

IN WITNESS WHEREOF, said A. Mitchell Palmer, as Alien Property Custodian, has duly executed these presents and hereto affixed his seal of office this 6th day of February, 1919.

A. MITCHELL PALMER,
Alien Property Custodian.

T. S. PLACE

* * * * * * * * * * * * * * * * *
* Alien Property Custodian *
* United States of America *
* Approved for execution R. H. *
* * * * * * * * * * * * * * * * *

DISTRICT OF COLUMBIA) SS:

On this 6 day of Feby. 1919, before me came A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing release, as the Alien Property Custodian, as aforesaid.

ODEN B. GRAY,
Notary Public.

* * * * * * * * * * * * * *
* Oden B. Gray *
* Notary Public *
* District of Columbia *
* * * * * * * * * * * * * *

Schedule "A"

Name	Patent Number	Date of Issue
Otto Scheller	892,311	June 30, 1908
Otto Scheller	892,312	June 30, 1908
Josef Schlessler	1,092,294	April 7, 1914
Josef Schiessler	1,099,998	June 16, 1914
Josef Schlessler	1,101,148	June 23, 1914
Josef Schlessler	1,116,130	November 3, 1914
Hermann Heinicke	835,923	November 6, 1906
Werner Otto	1,103,822	July 14, 1914
Max Jasper	914,483	March 9, 1909
Dr. Erich F. Huth G. m. b. H.	1,064,325	June 10, 1913
Christian Emil Bichel	736,483	August 18, 1903
Signal Gesellschaft m. b. H.	1,197,366	September 5, 1916
Signal Gesellschaft m. b. H.	1,190,156	July 4, 1916
Christoph Wirth and Christoph Beck	930,588	August 10, 1909
Hans Boss	1,152,272	August 31, 1915
Eugen Reisz	1,142,625	June 8, 1915
Arthur Steinacker	970,850	September 20, 1910
Firm Wirth, Beck & Knauss	1,029,573	June 11, 1912
Egbert von Lepel	1,168,837	January 18, 1916
Egbert von Lepel	1,224,048	April 24, 1917
Robert Furstenau	1,229,740	June 12, 1917
Signal Gesellschaft m. b. H.	1,116,059	November 3, 1914
Signal Gesellschaft m. b. H.	1,219,550	March 20, 1917
Walther Burstyn	1,148,827	August 3, 1915
Gerhard Jahr	905,537	December 1, 1908
Sigmund Musits	777,216	December 13, 1904
Christian Hülsmeyer	810,150	January 16, 1906
Rudolf Goldschmidt	1,087,113	February 17, 1914
Rudolf Goldschmidt	1,104,256	July 21, 1914
Rudolf Goldschmidt	1,104,257	July 21, 1914
Christoph Wirth	1,012,496	December 19, 1911
Relais-Gesellschaft m. b. H.	1,169,082	January 18, 1916
Egbert von Lepel	1,043,117	November 5, 1912
Egbert von Lepel	1,204,720	November 14, 1916

Recorded April 10, 1919

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DEFENDANT'S EXHIBIT No. 145.

COPY

Cl 4665

ASSIGNMENT

WHEREAS, by virtue of an assignment by A. Mitchell Palmer, Alien Property Custodian, said Custodian agreed to and thereby did assign to the United States of America, represented by Secretary of the Navy, the entire right, title and interest in the United States Letters Patent enumerated below with all damages and profits recoverable from any person, firm, corporation or Government, other than that of the United States, for past infringement thereof; and said Custodian thereby released and forever discharged said United States from all claims and demands for infringement of said Letters Patent prior to the date thereof, which assignment was executed February 6, 1919, and recorded in the United States Patent Office on April 10, 1919, in Liber U-106, Page 395 of Transfers of Patents, to wit:

No. 1,087,113, dated February 17, 1914, to Rudolf Goldschmidt, for Machine for Receiving Electric Waves;

No. 1,104,256, dated July 21, 1914, to Rudolf Goldschmidt, for Apparatus for and Method of Receiving Electric Waves; and

No. 1,104,257, dated July 21, 1914, to Rudolf Goldschmidt, for High Frequency Generator; and

WHEREAS, said assignment from said A. Mitchell Palmer to the United States of America, represented by the Secretary of the Navy, was inadvertently made through accident and mistake, and

WHEREAS Francis P. Garvan, now Alien Property Custodian, desires to acquire and have the entire right, title and interest in and to said United States Letters Patent returned to him as such Alien Property Custodian, and

WHEREAS, said United States of America, represented by the Secretary of the Navy, consents to the retransfer of said entire right, title and interest to said Alien Property Custodian,

NOW THEREFORE, to all whom it may concern, be it known that for and in consideration of the sum of One Hundred and Five ($105.00) Dollars in hand paid to the said United States of America by said Francis P. Garvan, Alien Property Custodian, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said United States of America, represented by the Secretary of the Navy, has assigned, sold, transferred and set over, and by these presents does assign, sell, transfer and set over unto the said Francis P. Garvan, Alien Property Custodian, its entire right, title and interest in and to each and all of the said patents and inventions, and in and to any reissue or reissues or extension or extensions thereof, the same to be held and enjoyed by the said Alien Property Custodian, his successors and assigns or other legal representatives, for his own proper use and behoof, of his successors, assigns or other legal representatives to the end of the term or terms for which said Letters Patent are granted or issued or may be extended, renewed or reissued, as fully and entirely as the same would have been held and enjoyed by said A. Mitchell Palmer, Alien Property Custodian, had said sale and assignment to the United States of America not been made;

TOGETHER WILL ALL CLAIMS for damages and profits by reason of past infringements of said Letters Patent, by any person, firm, corporation, association or Government other than that of the United States, with the right to sue for and collect the same for his own use and behoof and for the use and behoof of his successors, assigns or other legal representatives.

IN WITNESS WHEREOF, the United States of America, represented by the Secretary of the Navy, has caused this assignment to be signed and sealed this 11th day of November, 1919.

F. D. ROOSEVELT,
Acting Secretary of the Navy.

In Presence of:
GRAHAM EDGERTON,
Solicitor.

(Seal)

DEFENDANT'S EXHIBIT No. 146.

ASSIGNMENT

WHEREAS A. MITCHELL PALMER, formerly Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, did, during his incumbency of said office of Alien Property Custodian by virtue of certain requirements or demands issued under his hand and seal of office and duly recorded in the United States Patent Office, seize and require to be conveyed to him the several letters patent of the United States enumerated in Schedule A, which is annexed hereto and

made a part hereof, and did also seize and require to be conveyed to him all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of the letters patent enumerated in said Schedule A and also of the letters patent hereinafter enumerated in Schedule B which is annexed hereto and made a part hereof; and

WHEREAS I, FRANCIS P. GARVAN, was on the 4th day of March, 1919, duly appointed and thereafter qualified as Alien Property Custodian in succession of the said A. Mitchell Palmer; and

WHEREAS I, FRANCIS P. GARVAN, as Alien Property Custodian as aforesaid, by virtue of a requirement or demand issued under my hand and seal of office did seize and require to be conveyed to me all of the rights, interests and benefits created in favor of, or conferred upon, Optische Anstalt C. P. Goerz, also known as Optische Anstalt C. P. Goerz Optical Company, of Friedenau, Germany, an enemy, by a certain agreement dated April 20, 1909, between said enemy and The United States of America, whereby said enemy granted to The United States of America, certain rights and licenses under letters patent of the United States Nos. 784,487 and 784,852 and whereby The United States of America agreed to make certain payments to said enemy, and also all rights and interests created and existing in favor of, or conferred upon, said enemy in and to any royalties or sums of money hereinafter accruing in favor of, or becoming due or payable to, said enemy under the terms of said agreement, and also all claims and demands whatsoever created and existing in favor of, or conferred upon, said enemy against The United States of America; and

WHEREAS THE UNITED STATES OF AMERICA is desirous of acquiring the right to practice any and every invention covered by the letters patent enumerated in said Schedule A and to use and manufacture, and have manufactured, for its use any and every device, apparatus and instrument disclosed in and covered by said letters patent enumerated in said Schedule A; and is also desirous of having assigned to it all damages and profits recoverable at law or in equity from any and every person, firm, corporation or government for every past infringement of each and all of the letters patent enumerated in both said Schedules A and B and also all of the rights, interests and benefits created and existing in favor of, or conferred upon, said enemy by said agreement dated April 20, 1909;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, BE IT KNOWN that I, the said FRANCIS P. GARVAN, as Alien Property Custodian as aforesaid, in consideration of the sum of Two Thousand Dollars, ($2,000) to me in hand paid by, and for other good and valuable considerations unto me moving from, The United States of America, the receipt whereof is hereby acknowledged, have given and granted and by these presents do give and grant unto The United States of America, without payment of any further consideration or royalties whatsoever, the right and license to practice any and every invention covered by the letters patent enumerated in said Schedule A and to use and manufacture, and have maufactured, for its use any and every device, apparatus and instrument disclosed in and covered by said letters patent enumerated in said Schedule A, the said right and license to be held and enjoyed by the United States of America to the full end of the terms of said letters patent enumerated in said Schedule A.

AND for the consideration aforesaid, I, the said FRANCIS P. GARVAN, as Alien Property Custodian as aforesaid, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto The United States of America all damages and profits recoverable at law or in equity from any and every person, firm corporation or government for every past infringement of each and all of the letters patent enumerated in both said Schedules A and B, the same to be received, held and enjoyed by The United States of America.

AND for the consideration aforesaid, I the said FRANCIS P. GARVAN, as Alien Property Custodian as aforesaid, have sold, assigned, transferred and set over and by these presents do sell, assign, transfer and set over unto The United States of America, all of said rights, interests and benefits created in favor of, or conferred upon, said Optische Anstalt C. P. Goerz, also known as Optische Anstalt C. P. Goerz Optical Company, of Friedenau, Germany, an enemy, by said agreement dated April 20, 1909 between said enemy and The United States of America, whereby said enemy granted to The United States of America certain rights and licenses under letters patent of The United States Nos. 784,487 and 784,852, and whereby The United States of America agreed to make certain payments to said enemy, and also all rights and interests created and existing in favor of, or conferred upon, said enemy in and to any royalties or sums of money hereafter accruing in favor of, or becoming due or payable to, said enemy under the terms of said agreement, and also all claims and demands whatsoever created and existing in favor of, or conferred upon, said enemy against The United States of America.

This grant and assignment is made without re-

course of any kind upon the undersigned, Francis P. Garvan, personally, either by the grantee or assignee herein or by any other person or corporation; and neither the Alien Property Custodian, nor any representative or agent or agency thereof shall be held or admitted to have made any representation or guaranty, express or implied, concerning or in any way respecting the aforesaid letters patent or other property dealt with herein.

IN WITNESS WHEREOF I, the said FRANCIS P. GARVAN, as Alien Property Custodian as aforesaid, have hereunto set my hand and seal of office this third day of April, 1920.

(Sgd.) FRANCIS P. GARVAN,
Alien Property Custodian.

Witness:
(Sgd.) PAUL SMITH.

DISTRICT OF COLUMBIA, *ss:*

On this third day of April, 1920, before me came FRANCIS P. GARVAN, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as the Alien Property Custodian, as aforesaid.

(Sgd.) ALVIN G. BELT,
Notary Public,
D. C.

(Seal)

SCHEDULE A.

Patents relating to Binoculars and Like Devices.

Patent No.	Date of Issue	Title.
709,898	Sept. 30, 1902	Binocular Prism-Telescope.
781,233	Jan. 31, 1905	Prism-support for use with Optical Instruments.
836,273	Nov. 20, 1906	Prism-Telescope.
898,653	Sept. 15, 1908	Prismatic Double Telescope.
904,066	Nov. 17, 1908	Prism-Telescope and Similar Prism-carrying Device and means for Adjusting the Prisms.
1,136,951	Apr. 27, 1915	Surveying Instrument.

Patents relating to Lenses, Cameras and Photographic Apparatus Generally

Patent No.	Date of Issue	Title.
709,480	Sept. 23, 1902	Folding Stereoscopic Camera.
738,402	Sept. 8, 1903	Shutter for Photographic Objectives.
745,550	Dec. 1, 1903	Photographic Objective.
777,320	Dec. 13 1904	Phoyographic Objective.
833,916	Oct. 23, 1906	Roller-blind for Photographic Cameras.
877,499	Jan. 28, 1908	Device for successively exposing Sensitive Sheets.
886,739	May 5, 1908	Device for focusing Photographic Cameras.
902,822	Nov. 3, 1908	Folding Photographic Camera.
909,459	Jan. 12, 1909	Device for exposing Light-Sensitive Layer-carriers.
912,352	Feb. 16, 1909	Objective.
913,353	Feb. 23, 1909	Foldable Reflex-Camera.
926,495	June 29, 1909	Photographic Change Box.
930,621	Aug. 10, 1909	Packing for Light-Sensitive Layer-carriers.

Schedule A—Page 2.

941,126	Nov. 23, 1909	Roller-blind for Photographic Cameras.
944,595	Dec. 28, 1909	Photographic Camera.
947,946	Feb. 1, 1910	Device for exposing Light-Sensitive Layer-carriers and Film Structure therefor.
984,007	Feb. 14, 1911	Device for exposing Sensitive Layer-carriers.
986,420	Mar. 7, 1911	Film Pack and Adapter therefor.

Patent No.	Date of Issue	Title.
988,637	Apr. 4, 1911	Level.
989,784	Apr. 18, 1911	Photographic Camera.
1,000,630	Aug. 15, 1911	Packing for Light-Sensitive Layer-carriers.
1,066,955	July 8, 1913	Magazine Plate-holder and Film-pack therefor.
1,098,844	June 2, 1914	Package for Light-Sensitive Films.
1,108,307	Aug. 25, 1914	Spherically, chromatically, Astigmatically and Comatically Corrected Double Objective.
1,151,978	Aug. 31, 1915	Cinematographic Apparatus.
1,196,116	Aug. 29, 1916	Folding Camera.
1,199,238	Sept. 26, 1916	Photographic Plate-holder.

Patents relating to Gun Sights, Periscopes and Other Military and Naval Instruments.

Patent No.	Date of Issue	Title.
784,487	Mar. 7, 1905	Tangent-scale Telescope for Guns.
784,852	Mar. 14, 1905	Panorama-Telescope.
813,933	Feb. 27, 1906	Automatic Recording Device.
829,121	Aug. 21, 1906	Telescope for Submarine and Submergible Boats.
831,350	Sept. 18, 1906	Telescope with Refracted Optical Axis.

Schedule A—Page 3.

879,572	Feb. 18, 1908	Telescope with Displaceable Reversing System.
881,127	Mar. 10, 1908	Instrument for Optically Measuring Distances.
881,590	Mar. 10, 1908	Mounting of Sighting Telescopes.
882,762	Mar. 24, 1908	Panoramic Telescope.
886,722	May 5, 1908	Telescope.
892,731	July 7, 1908	Angle-measuring Instrument with Telescopes.
907,366	Dec. 22, 1908	Sighting Telescope for Arms and Arm with Sighting Telescope.
934,440	Sept. 21, 1909	Ocular Prism for Base-line Telemeters.
941,503	Nov. 30, 1909	Optical Distance-measuring Instrument.
972,622	Oct. 11, 1910	Stereotelescope.
976,370	Nov. 22, 1910	Periscope.
1,001,958	Aug. 29, 1911	Attaching Device for Optical Instruments.

Patent No.	Date of Issue	Title.
1,027,420	May 28, 1912	Angular Mirror.
1,038,831	Sept. 17, 1912	Distance-measuring Instrument of the Coincident-image Type.
1,060,902	May 6, 1913	Base-line Telemeter.
1,066,906	July 8, 1913	Distance-measuring Instrument.
1,067,027	July 8, 1913	Telemeter.
1,085,611	Feb. 3, 1914	Annular Mirror Periscope.
1,085,612	Feb. 3, 1914	Adjusting Device for Optical Instrument.
1,086,297	Feb. 3, 1914	Prismatic Device.
1,088,701	Mar. 3, 1914	Distance-measuring Instrument.
1,091,933	Mar. 31, 1914	Telescope with Variable Magnification.
1,097,635	May 26, 1914	Telescope with Variable Magnification.

Schedule A—Page 4.

1,098,905	June 2, 1914	Periscope.
1,104,769	July 28, 1914	Optical System for Prism-carrying Devices.
1,108,180	Aug. 25, 1914	Base-line Telemeter.
1,116,069	Nov. 3, 1914	Telescope of unvariable Length and Progressively-Variable Magnification.
1,146,428	July 13, 1915	Device for taking Aim with Quick-firing Guns with Protecting Shields and Telescopic Sight.
1,147,990	July 27, 1915	Distance-measuring Instrument.
1,160,614	Nov. 16, 1915	Distance-measuring Instrument.
1,160,615	Nov. 16, 1915	Aiming Device.
1,209,958	Dec. 26, 1916	Panoramic Telescope.
1,236,722	Aug. 14, 1917	Optical System of Variable Magnification.
1,247,185	Nov. 20, 1917	Distance-measuring Instrument.

SCHEDULE B.

Patent No.	Date of Issue	Title.
564,216	July 21, 1896	Photographic Shutter.
599,700	Mar. 1, 1898	Combined Lens for Photographic Purposes.
635,472	Oct. 24, 1899	Photographic Objective.
635,473	Oct. 24, 1899	Three-lens System for Photographic Purposes.

Patent No.	Date of Issue	Title.
648,123	Apr. 24, 1900	Telescopic Tripod.
677,460	July 2, 1901	Photographic Magazine Camera.
687,373	Nov. 26, 1901	Focal Adjustment for Binocular Optical Instruments.
695,638	Mar. 18, 1902	Magazine Plate-Holder.
695,639	Mar. 18, 1902	Photographic Roll Holder.
704,320	July 8, 1902	Folding Camera with Roll-Film Magazine.
706,650	Aug. 12, 1902	Astigmatically Corrected Wide-Angle Objective.
706,651	Aug. 12, 1902	Magazine Plate-Holder.

Patents under Schedule B not licensed.
Rights only assigned.

DEFENDANT'S EXHIBIT No. 147.

Liber I 112,
Page 421.

LICENSE.

WHEREAS, THE CHEMICAL FOUNDATION, INCORPORATED, a corporation organized and existing under and by virtue of the laws of the State of Delaware, is the owner of the legal title in and to the letters patent enumerated in Schedule A hereto attached, under and by virtue of an assignment to it by the Alien Property Custodian, dated the 21st day of December, 1920, and duly recorded in the United States Patent Office on the 21st day of December 1920, in Transfers of Patents; and

WHEREAS, The United States Government as represented by the Secretary of the Navy is desirous of acquiring the right and license, non-exclusive and non-assignable, to practice any and every invention covered by and every letters patents enumerated in Schedule A hereto attached, including the right and license, non-exclusive and non-assignable, to manufacture for its own use, any and every device, apparatus, and in-

strument disclosed in and covered by said letters patent.

Now, Therefore, to all Whom it may Concern, be it Known That The Chemical Foundation, Incorporated, in consideration of the sum of One Dollar ($1.00) lawful money of the United States, to it in hand paid, and for other good and valuable consideration, unto it moving from the United States Government as represented by the Secretary of the Navy (the receipt whereof is hereby acknowledged) has given and granted, and by these presents does give and grant unto the United States Government as represented by the Secretary of the Navy, and his successor in office, without payment of any further consideration, royalty or license fee whatsoever, the right and license, non-exclusive and non-assignable, to practice any and every invention covered by any and every of the letters patent enumerated in Schedule A hereto attached, and made part hereof, including the right and license, non-exclusive and non-asignable, to use and manufacture for its own use any and every device, apparatus and instrument disclosed in and covered by said letters patent To Have And To Hold the said right and license to the full end of the terms for which said letters patent have been granted.

And for the consideration aforesaid the said The Chemical Foundation, Incorporated, has given and granted, and by these presents does give and grant unto the United States Government as represented by the Secretary of the Navy, and his successor in office, the right and license to dispose of by sale or otherwise any and every device, apparatus and instrument which may have been or shall hereafter be manufactured by it for its own use under the right and license herein granted, but which, after said manufacture and use, it is desired to dispose of, and such de-

vice, apparatus or instrument shall remain forever licensed.

PROVIDED, HOWEVER, that in all cases where an exclusive or non-exclusive right or license has already been granted or now exists, in favor of a citizen of the United States of America under any of said letters patent, with which a grant of the right and license granted hereunder to the United States Government as represented by the Secretary of the Navy, and his successor in office, under the same letters patent would be inconsistent, then as to such letters patent no right or license is granted hereunder to the United States Government as represented by the Secretary of the Navy, and his successor in office; and PROVIDED, ALSO, that the right or license granted to the United States Government as represented by the Secretary of the Navy, and his successor in office, hereunder shall also be subject to any and all licenses already granted or which may hereafter be granted by The Chemical Foundation, Incorporated, under any of the letters patent enumerated in Schedule A hereto attached and made part hereof; and PROVIDED FURTHER that such right and license granted hereunder to the United States Government as represented by the Secretary of the Navy, and his successor in office, shall be subject also, in all cases, to the rights and claims as the same may be prosecuted, adjudicated and determined under Section 9 of the "Trading with the Enemy Act," approved October 6, 1917 and the amendments thereto, and the executive orders and proclamations issued in pursuance thereof.

AND IT IS FURTHER PROVIDED, that neither the Chemical Foundation, Incorporated, nor any representative or agent or agency thereof, shall be held or admitted to have made any representation or guaranty, express or implied, concerning or in any way respect-

ing the letters patent enumerated in Schedule A hereto attached and made part hereof.

IN WITNESS WHEREOF, THE CHEMICAL FOUNDATION, INCORPORATED, has caused its corporate seal to be hereunto affixed and duly attested and this license to be signed by its duly authorized officers this 26 day of February, 1921.

THE CHEMICAL FOUNDATION,
INCORPORATED,
By
FRANCIS P. GARVIN,

The Chemical Foundation Incorporated Corporate Seal 1919 Delaware

Attest:
GEO. J. CORBUTT,
Secretary.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.:*

On this 26 day of February, 1921, before me came FRANCIS P. GARVAN, to me known, who being by me duly sworn, did depose and say: That he resides in the Borough of Manhattan, City of New York; that he is the President of The Chemical Foundation, Incorporated, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed

by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

LORETTO T. CONROY,
Notary Public.

LORETTO T. CONROY,
NOTARY PUBLIC
KINGS COUNTY,
N. Y.

Notary Public, Kings County
Clerk's No. 302, Register's No. 1098
New York Co. No. 239, Register's No. 1613
Commission expires March 30, 1921.

SCHEDULE A

Patent No.		
720,361	Inventor	Constantin & Rudolf Muller
	Date	Feb. 10, 1903
	Title	Regenerating platinum contact substances
	Seizure	Liber H-108, Pg. 369.
726,076	Inventor	Max LeBlanc and Constantin Krauss
	Date	April 21, 1903
	Title	Making Sulfuric Anhydrid
	Seizure	Liber C-108 Pg. 334
728,022	Inventor	Paul Schultz
	Date	May 12, 1903
	Title	Devices for automatically recording the amount of carbonic acid in products of combustion
	Seizure	Liber D-108 Pg. 482
748,424	Inventor	Arno Schmidt
	Date	Dec. 29, 1903
	Title	Hypodermic Syringe
	Seizure	Liber D-108 Pg. 456

Patent No.		
751,704	Inventor	Rudolf Weber
	Date	Feb. 9, 1904
	Title	Process for prod. paved tracks on macadamized roads, etc.
	Seizure	Liber I-108 Pg. 378
760, 361	Inventor	Louis Wolff
	Date	May 17, 1904
	Title	Steadying resistances for arc lamp
	Seizure	Liber H-108 Pg. 479
762,256	Inventor	Robert Schneider
	Date	June 7, 1904
	Title	Mixture for treating tuberculosis
	Seizure	Liber H-108 Pg. 445
762,847	Inventor	Max Schneider
	Date	June 14, 1904
	Title	Storage batteries
	Seizure	Liber G-108 Pg. 405
763,513	Inventor	Heinrich Schmidt
	Date	June 28, 1904
	Title	Fireproof ceiling
	Seizure	Liber J-108 Pg. 33
768,774	Inventor	Karl Schmidt
	Date	Aug. 30, 1904
	Title	Construction of frozen walls for shafts in mines.
	Seizure	Liber F-108 Pg. 128

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SCHEDULE A-2

Patent No.		
770,489	Inventor	Louis Wolff
	Date	Sept. 20, 1904
	Title	Electric arc lamps
	Seizure	Liber H-108 Pg. 479

Patent No.		
771,327	Inventor	August H. Schmidt
	Date	Oct. 4, 1904
	Title	Valve
	Seizure	Liber J-108 Pg. 32
771,669	Inventor	Adolf Schneegass
	Date	Oct. 4, 1904
	Title	Cold treatment of polished wood articles
	Seizure	Liber J-108 Pg. 20
774,607	Inventor	Rudolf G. Schmitt
	Date	Nov. 8, 1904
	Title	Mfg. of objects of paper mache
	Seizure	Liber H-108 Pg. 448
774,801	Inventor	Moritz Von Rohr
	Date	Nov. 15, 1904
	Title	Lens stereoscopes
	Seizure	Liber H-108 Pg. 470
780,670	Inventor	Rudolf Kron
	Date	Jan. 24, 1905
	Title	Methods of and applying sols, or fluids to traveling webs
	Seizure	Liber D-108 Pg. 152
781,338	Inventor	Albrecht Heil
	Date	Jan. 31, 1905
	Title	Methods of unit. the two components of a thermo elec. couple
	Seizure	Liber H-108 Pg. 363
783,662	Inventor	Louis Wolff
	Date	Feb. 28, 1905
	Title	Incandescent gas light lamps
	Seizure	Liber E-108 Pg. 191
793,237	Inventor	Eugen Schmid
	Date	June 27, 1905
	Title	Art of copying plastic products
	Seizure	Liber C-108 Pg. 51

Patent No.		
795,943	Inventor	Gustav Stern
	Date	Aug. 1, 1905
	Title	Moistening cloth for copying writings
	Seizure	Liber G-108 Pg. 126
805,235	Inventor	Paul Schmidt & Adolphe Desgraz
	Date	Nov. 21, 1905
	Title	Producer gas furnaces
	Seizure	Liber C-108 Pg. 113

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SCHEDULE A-3

Patent No.		
807,553	Inventor	Alex Haase
	Date	Dec. 19, 1905
	Title	Treatment of wicks for increasing their inflammability
	Seizure	Liber H-108 Pg. 160
808,086	Inventor	Albrecht Heil
	Date	Dec. 28, 1905
	Title	Thermo electric batteries
	Seizure	Liber F-108 Pg. 303
811,971	Inventor	Szekely and Kovacs
	Date	Feb. 6, 1906
	Title	Process of mfg. milk preparations
	Seizure	Liber D-108 Pg. 495
817,640	Inventor	August B. Handschug
	Date	April 10, 1906
	Title	Auto. Gas Igniters
	Seizure	Liber E-108 Pg. 414
818,453	Inventor	Johannes Kruger
	Date	April 24, 1906
	Title	Machine for cutting up or mitering flanged metal means or girders
	Seizure	Liber B-108 Pg. 147

Patent No.		
819,144	Inventor	Simon Sigmund Konig
	Date	May 1, 1906
	Title	Wafer-Capsule Machine
	Seizure	Liber I-108 Pg. 90
822,270	Inventor	Arnst Haagn
	Date	June 5, 1906
	Title	Elec. Heated Hollow Bodies
	Seizure	Liber C-108 Pg. 478
829,664	Inventor	Hermann Mehner
	Date	Aug. 28, 1906
	Title	Process of solidfying earthy ground
	Seizure	Liber B-108 Pg. 313
830,225	Inventor	Fritz Haber
	Date	Sept. 4, 1906
	Title	Testing gaseous mixtures
	Seizure	Liber R-108 Pg. 305
832,322	Inventor	Johann Jurgens & August Westphal
	Date	Oct. 2, 1906
	Title	Process of impregnating roasted coffee
	Seizure	Liber D-108 Pg. 135
836,054	Inventor	Paul Schmidt
	Date	Nov. 13, 1906
	Title	Methods of manufacturing gas
	Seizure	Liber C-108 Pg. 44

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SCHEDULE A-4

Patent No.		
842,012	Inventor	Emil Richter
	Date	Jan. 22, 1907
	Title	App. forcing fluids
	Seizure	Liber J-108 Pg. 3
842,730	Inventor	Hermann Viertel & Georg Egly

Patent No.		
	Date	Jan. 29, 1907
	Title	Making electrically conducting bodies for contacts
	Seizure	Liber G-108 Pg. 416
846,657	Inventor	Oscar Frolich
	Date	March 12, 1907
	Title	Process Extracting Copper
	Seizure	Liber D-108 Pg. 109
847,065	Inventor	Ernst Haagn
	Date	March 12, 1907
	Title	Body to be heated electrically
	Seizure	Liber I-108 Pg. 61
848,622	Inventor	Fritz Bauke
	Date	March 26, 1907
	Title	Gas Generators
	Seizure	Liber C-108 Pg. 252
849,429	Inventor	Walter Schumacher
	Date	April 9, 1907
	Title	Apparatus for separating and discharging Coke
	Seizure	Liber I-108 Pg. 345
850,397	Inventor	H. P. R. L. Porscke
	Date	April 16, 1907
	Title	Elastic Fluid turbines
	Seizure	Liber I-108 Pg. 328
857,247	Inventor	Adolph Ernst Menne
	Date	June 18, 1907
	Title	Apparatus for fusing metal
	Seizure	Liber J-108 Pg. 87
858,675	Inventor	Heinrich Schneider
	Date	July 2, 1907
	Title	Fireproof slabs
	Seizure	Liber F-108 Pg. 125
862,336	Inventor	Ferdinand V. Kallab
	Date	Aug. 6, 1907

Patent No.		
	Title	Color comparators
	Seizure	Liber G-108 Pg. 272
863,081	Inventor	Phillipp Muller, Jr.
	Date	Aug. 13, 1907
	Title	Mfg. of ailmentary products
	Seizure	Liber G-108 Pg. 88

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SCHEDULE A-5

Patent No.		
864,139	Inventor	Walter Ruebel
	Date	Aug. 20, 1907
	Title	Mfg. of alloys
	Seizure	Liber F-108 Pg. 96
866,498	Inventor	Adolf Menne & Wilhelm Zollenkopf
	Date	Sept. 17, 1907
	Title	Methods of melting through masses of material
	Seizure	Liber J-108 Pg. 88
874,267	Inventor	Hubert Wagner
	Date	Dec. 17, 1907
	Title	Means for mounting stone lithographic rollers
	Seizure	Liber I-108 Pg. 179
874,432	Inventor	H. P. R. L. Porske
	Date	Dec. 24, 1907
	Title	Turbines
	Seizure	Liber I-108 Pg. 328
874,667	Inventor	Max Gehre
	Date	Dec. 4, 1907
	Title	App. for measuring supply of steam from boiler
	Seizure	Liber C-108 Pg. 418
875,813	Inventor	Carl Heinz
	Date	Jan. 7, 1908
	Title	Gas generators
	Seizure	Liber B-108 Pg. 50

Patent No.		
878,322	Inventor	Hubert Wagner
	Date	Feb. 4, 1908
	Title	Cemented lithographic stone
	Seizure	Liber C-108 Pg. 202
883,144	Inventor	Hans Mikorey
	Date	March 24, 1908
	Title	Color spraying apparatus
	Seizure	Liber F-108 Pg. 359
885,480	Inventor	Friedrich Jahns
	Date	April 21, 1908
	Title	Process of making producer gas
	Seizure	Liber B-108 Pg. 93
886,683	Inventor	Hugo Dicke
	Date	May 5, 1908
	Title	Process for balling together of pulverulent or dusty ores
	Seizure	Liber E-108 Pg. 319
887,058	Inventor	Fritz Bauke
	Date	May 12, 1908
	Title	Methods of producing gas
	Seizure	Liber C-108 Pg. 252
888,006	Inventor	Theodor Franke
	Date	May 19, 1908
	Title	Wall and Ceiling Covering
	Seizure	Liber G-108 Pg. 230

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SCHEDULE A-6

Patent No.		
888,120	Inventor	Reinhold Scherfenberg
	Date	May 19, 1908
	Title	Structures made of bricks for reaction towers heat compensation apparatus and like
	Seizure	Liber D-108 Pg. 453
888,480	Inventor	Wilhelm Friess & Eduard Weingartner

Patent No.		
	Date	May 26, 1908
	Title	Bronzing machines
	Seizure	Liber G-108 Pg. 238
891,560	Inventor	Franz Eugen-Muller
	Date	June 23, 1908
	Title	Refrigerating apparatus employing carbonic acid
	Seizure	Liber D-108 Pg. 279
892,241	Inventor	Heinrich Freise
	Date	June 30, 1908
	Title	Methods of electrically detecting dangerous gases and apparatus therefor
	Seizure	Liber G-108 Pg. 24
895,628	Inventor	Goldschmidt & Weil
	Date	Aug. 11, 1908
	Title	Methods of Mfg. Metals
	Seizure	Liber C-108 Pg. 445
897,840	Inventor	Johann Friedrich Meyer, Jr., Ludwig Roselius, Karl Heinrich Wimmer
	Date	Sept. 1, 1908
	Title	Preparation of Coffee
	Seizure	Liber G-108 Pg. 95
898,607	Inventor	Jean Schmidt
	Date	Sept. 15, 1908
	Title	Illuminating apparatus
	Seizure	Liber H-108 Pg. 452
902,871	Inventor	Hans Goldschmidt
	Date	Nov. 3, 1908
	Title	Thermic Mixtures
	Seizure	Liber C-108 Pg. 445
903,112	Inventor	Paul Schmidt & Adolphe Desgraz
	Date	Nov. 3, 1908

Patent No.		
	Title	Gas producer
	Seizure	Liber C-108 Pg. 114
903,184	Inventor	Christian Eitle
	Date	Nov. 10, 1908
	Title	Gas retort feeding machines
	Seizure	Liber D-108 Pg. 69
904,886	Inventor	Otto Max Muller
	Date	Nov. 24, 1908
	Title	Self-igniting devices
	Seizure	Liber D-108 Pg. 281

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SCHEDULE A-7

Patent No.		
905,594	Inventor	Ferdinand Schultz
	Date	Dec. 1, 1908
	Title	Devices for locating a molten distributing fuse
	Seizure	Liber H-108 Pg. 251
905,598	Inventor	Heinrich Sohnlein
	Date	Dec. 1, 1908
	Title	Gas Engine
	Seizure	Liber C-108 Pg. 84
905,632	Inventor	Heinz Bauer
	Date	Dec. 1, 1908
	Title	Devices for admitting gas into vacuum tubes
	Seizure	Liber H-108 Pg. 495
906,812	Inventor	Josef Maly
	Date	Dec. 15, 1908
	Title	Gas Producer
	Seizure	Liber B-108 Pg. 264
909,172	Inventor	Rudolf Emmerich
	Date	Jan. 12, 1909
	Title	Process of Preserving Meat
	Seizure	Liber E-108 Pg. 339
911,745	Inventor	Otto Muller
	Date	Feb. 9, 1909

Patent No.		
	Title	Making albuminous bread
	Seizure	Liber G-108 Pg. 89
911,776	Inventor	Rudolf Straubel
	Date	Feb. 9, 1909
	Title	Binocular Telescope with double hinge
	Seizure	Liber Z-108 Pg. 260
912,509	Inventor	Bernhard Thiemich
	Date	Feb. 16, 1909
	Title	Process of mfg. gas from coal
	Seizure	Liber C-108 Pg. 134
914,233	Inventor	Max Breslauer
	Date	March 2, 1909
	Title	Frost Proof fire Extinguishing Liquids
	Seizure	Liber D-108 Pg. 46
918,752	Inventor	Albert Konig
	Date	April 20, 1909
	Title	Double telescope
	Seizure	Liber Z-108 Pg. 260
919,805	Inventor	Christian Albrecht
	Date	April 27, 1909
	Title	Linetype machines
	Seizure	Liber C-108 Pg. 370

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SCHEDULE A-8.

Patent No.		
920,756	Inventor	Albert Konig
	Date	May 4, 1909
	Title	Binocular telescope
	Seizure	Liber Z-108 Pg. 260
921,897	Inventor	Ludwig Schmidt & Herbert Schmidt
	Date	May 18, 1909
	Title	Automatic cutoffs for gas
	Seizure	Liber C-108 Pg. 111

Patent No.		
927,374	Inventor	Arthur Muller
	Date	July 6, 1909
	Title	Mfg. incandescent mantles
	Seizure	Liber F-108 Pg. 337
931,460	Inventor	Fritz Muller
	Date	Aug. 17, 1909
	Title	Gas Heating and illuminating
	Seizure	Liber B-108 Pg. 290
935,081	Inventor	August Wolfsholz
	Date	Sept. 28, 1909
	Title	Methods of consolidating loose soils, quicks, etc.
	Seizure	Liber H-108 Pg. 284
937,687	Inventor	Fritz Muller
	Date	Oct. 19, 1909
	Title	Gas Heating and illuminating
	Seizure	Liber B-108 Pg. 290
938,758	Inventor	Goldschmidt & Weil
	Date	Nov. 2, 1909
	Title	Methods of Mfg. Calcium Silicon Alloys, etc.
	Seizure	Liber C-108 Pg. 445
940,166	Inventor	Albert Konig
	Date	Nov. 16, 1909
	Title	Separating Prism Telemeter
	Seizure	Liber Z-108 Pg. 260
942,393	Inventor	Albert Konig
	Date	Dec. 7, 1909
	Title	Angle measuring appliance
	Seizure	Liber G-108 Pg. 284
947,971	Inventor	Albert Konig
	Date	Feb. 1, 1910
	Title	Binocular telescope
	Seizure	Liber E-108 Pg. 468

Patent No.		
949,501	Inventor	Moritz Von Rohr
	Date	Feb. 15, 1910
	Title	Spectacle glasses
	Seizure	Liber H-108 Pg. 470

F P G

SCHEDULE A-9.

Patent No.		
956,775	Inventor	Heinrich Wilhelm Meyer
	Date	May 3, 1910
	Title	Receptacles for liquid weighing machines
	Seizure	Liber J-108 Pg. 90
959,521	Inventor	Konrad Hahn
	Date	May 31, 1910
	Title	Electrolytic App. with Liquid Anode
	Seizure	Liber F-108 Pg. 302
970,122	Inventor	Ludwig Schmidt & Herbert Schmidt
	Date	Sept. 13, 1910
	Title	Automatic gas cut-offs
	Seizure	Liber C-108 Pg. 111
970,932	Inventor	Otto Kruger
	Date	Sept. 20, 1910
	Title	Stamping and printing paper webs
	Seizure	Liber D-108 Pg. 147
977,607	Inventor	Georg Egly
	Date	Dec. 6, 1910
	Title	Ard Lamps electrodes
	Seizure	Liber D-108 Pg. 58
980,802	Inventor	Ignaz Kriedl
	Date	Jan. 3, 1911
	Title	Mfg. of incandescent gas mantles
	Seizure	Liber B-108 Pg. 184

Patent No.		
981,151	Inventor	Max Arndt
	Date	Jan. 10, 1911
	Title	Devices for making measurements by means of flowing liquids
	Seizure	Liber F-108 Pg. 237
983,586	Inventor	Reinhold Wagner
	Date	Feb. 7, 1911
	Title	Conveyers for incandescent materials
	Seizure	Liber E-108 Pg. 250
986,271	Inventor	Hugo Dicke
	Date	March 7, 1911
	Title	Process of refining and agglomerating ores and the like
	Seizure	Liber H-108 Pg. 320
994,447	Inventor	Georg Egly
	Date	June 6, 1911
	Title	Elec. Radiatory Stoves
	Seizure	Liber I-108 Pg. 222
995,601	Inventor	Edmund Hohmann
	Date	June 20, 1911
	Title	Gasometers
	Seizure	Liber B-108 Pg. 435

F P G

SCHEDULE A-10.

Patent No.		
996,804	Inventor	Georg Schumacher
	Date	July 4, 1911
	Title	Alarm indicators for boiling purposes
	Seizure	Liber H-108 Pg. 55
1,000,346	Inventor	Moritz Von-Rohr
	Date	Aug. 8, 1911
	Title	Magnifying spectacle glasses
	Seizure	Liber E-108 172

Patent No.		
1,000,609	Inventor	Albert Konig
	Date	Telemeter
	Seizure	Liber Z 108 Pg. 260.
1,000,618	Inventor	Franz Meyer
	Date	Aug. 15, 1911
	Title	Tripods with Hinged legs
	Seizure	Liber D-108 Pg. 257
1,012,617	Inventor	Georg Egly
	Date	Dec. 26, 1911
	Title	Elec. Raditors.
	Seizure	Liber E-108 Pg. 333
1,014,690	Inventor	Heinrich Carl Buer
	Date	Jan. 16, 1912
	Title	Butter Flavoring
	Seizure	Liber D-108 Pg. 27
1,021,249	Inventor	Otto Grunewald & Max Gorich
	Date	March 26, 1912
	Title	Prop for mines
	Seizure	Liber C-108 Pg. 483
1,027,154	Inventor	Georg Richter & Hermann Broker
	Date	May 21, 1912
	Title	Gas Generating furnaces
	Seizure	Liber B-108 Pg. 435
1,028,281	Inventor	Moritz Von Rohr
	Date	June 4, 1912
	Title	Telescopic spectacle glasses
	Seizure	Liber H-108 Pg. 470
1,029,835	Inventor	Hubert Wagner
	Date	June 18, 1912
	Title	Lithographic Stones
	Seizure	Liber F-108 Pg. 180
1,030,128	Inventor	Moritz Von Rohr
	Date	June 18, 1912
	Title	Spectacle glasses
	Seizure	Liber E-108 Pg. 172

F P G

SCHEDULE A-11.

Patent No.		
1,048,135	Inventor	Otto Cloetta & Fritz Muller
	Date	Dec. 24, 1912
	Title	Respiration apparatus
	Seizure	Liber E-108 Pg. 21
1,049,947	Inventor	Otto Uhde
	Date	Jan. 7, 1913
	Title	Apparatus for destroying refuse
	Seizure	Liber I-108 Pg. 159
1,050,280	Inventor	Carl A. F. Kruger
	Date	Jan. 14, 1913
	Title	Therapeutic Belts
	Seizure	Liber G-108 Pg. 290
1,054,598	Inventor	Edmund Mullner
	Date	Feb. 25, 1913
	Title	Photographic recordings app. for galvanosmeters oscillographs
	Seizure	Liber D-108 Pg. 285
1,060,868	Inventor	Leo Ubbelohde
	Date	May 6, 1913
	Title	Electric resistance furnaces
	Seizure	Liber G-108 Pg. 170
1,066,200	Inventor	Heinrichs W. A. T. Friedrichs
	Date	July 1, 1913
	Title	Treating ground nuts and prod. derived
	Seizure	Liber D-108 Pg. 99
1,066,651	Inventor	Heinrich Porscke & Julius Achenbach
	Date	July 8, 1913
	Title	Electrodes for secondary galvanic cells
	Seizure	Liber H-108 Pg. 28
1,069,047	Inventor	Franz Wagner

Patent No.		
	Date	1913
	Title	Gas lighters
	Seizure	Liber F-108 Pg. 179
1,075,720	Inventor	Philipp Muller
	Date	October 14, 1913
	Title	Mfg. of alimentary products
	Seizure	Liber D-108 Pg. 294
1,078,387	Inventor	Theuerkorn
	Date	Nov. 11, 1913
	Title	Apparatus for lining tubes with lead, tin, etc.
	Seizure	Liber G-108 Pg. 412
1,062,166	Inventor	Albert Konig
	Date	May 20, 1913
	Title	Sterescopic Telemeter
	Seizure	Liber Z-108 Pg. 260

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SCHEDULE A-12

Patent No.		
1,080,920	Inventor	Philipp Muller
	Date	Dec. 9, 1913
	Title	Mfg. of alimentary products
	Seizure	Liber D-108 Pg. 282
1,083,543	Inventor	Christian Friedrich Kroenert & Hans Jens Meyer
	Date	Jan. 6, 1914
	Title	Adjusting device for Pattern-Cylinders of Printing Machines
	Seizure	Liber E-108 Pg. 478
1,086,721	Inventor	Christian Friedrich Kroenert & Hans Jens Meyer
	Date	Feb. 10, 1914
	Seizure	Liber E-108 Pg. 478
1,089,805	Inventor	Georg Wolf
	Date	March 10, 1914

Patent No.		
	Title	Medical Appliance
	Seizure	Liber I-108 Pg. 168
1,099,595	Inventor	Franz Fischer
	Date	June 9, 1914
	Title	Process and App. for heating
	Seizure	Liber D-108 Pg. 104
1,100,694	Inventor	Frans M. Meyers
	Date	June 16, 1914
	Title	Method of Producing and Maintaining a High Vacuum
	Seizure	Liber D-108 Pg. 258
1,100,845	Inventor	Emil Richter
	Date	June 23, 1914
	Title	Mfg. of grinding app.
	Seizure	Liber H-108 Pg. 35
1,101,081	Inventor	Carl Zeiss
	Date	June 23, 1918
	Title	Optical square prisms
	Seizure	Liber F-108 Pg. 323
1,102,536	Inventor	Erwin Muller-Bralitz
	Date	Aug. 11, 1914
	Title	Containers for storing photographic plates
	Seizure	Liber G-108 Pg. 91
1,103,353	Inventor	Georg Egly
	Date	July 14, 1914
	Title	Elec. Heater
	Seizure	Liber I-108 Pg. 222
1,104,723	Inventor	Heinrich Weiss
	Date	July 21, 1914
	Title	Oil Transformers
	Seizure	Liber H-108 Pg. 88

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SCHEDULE A-13

Patent No.		
1,108,402	Inventor	Paul Schmitz

Patent No.		
	Date	Aug. 25, 1914
	Title	Use of Rawhide
	Seizure	Liber A-108 Pg. 264
1,117,618	Inventor	Alwin Ach
	Date	Nov. 17, 1914
	Title	Surgical Appliance
	Seizure	Liber C-108 Pg. 372
1,126,027	Inventor	Max Jullig
	Date	Jan. 26, 1915
	Title	App. for detecting pipe leads, etc. embedded in masonry.
	Seizure	Liber H-108 Pg. 7
1,126,300	Inventor	Emil Schneider
	Date	Jan. 26, 1915
	Title	Centrifugal pump, blower, compressor, and the like.
	Seizure	Liber G-108 Pg. 391
1,126,877	Inventor	Bela Schaefer
	Date	Feb. 2, 1915
	Title	Vapor alternating rectifiers and similar app.
	Seizure	Liber D-108 Pg. 430
1,128,154	Inventor	Joseph Konig
	Date	Feb. 9, 1915
	Title	Making foodstuffs from sulfite cellulose waste liquors
	Seizure	Liber I-108 Pg. 288
1,130,588	Inventor	Hans Friedenthal
	Date	March 2, 1915
	Title	Fruit and vegetable dust and process of making
	Seizure	Liber G-108 Pg. 27
1,132,313	Inventor	Georg Egly
	Date	March 16, 1915
	Title	Flame arc lamps and electrodes therefor.
	Seizure	Liber G-108 Pg. 11

Patent No.		
1,140,289	Inventor	Wilhelm G. Schroder
	Date	May 18, 1915
	Title	App. for Homogenizing milk & other liquids
	Seizure	Liber J-108 Pg. 38
1,143,667	Inventor	Moritz Von Rohr
	Date	June 22, 1915
	Title	Optical systems
	Seizure	Liber E-108 Pg. 172
1,152,848	Inventor	Heinrich Schliggemann
	Date	Sept. 7, 1915
	Title	Plants for cooling, removing scale from chalking and drying wire delivered, by finishing rolls.
	Seizure	Liber C-108 Pg. 58

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SCHEDULE A-14

Patent No.		
1,155,024	Inventor	Carl Wolf
	Date	Sept. 28, 1915
	Title	Water-supply system
	Seizure	Liber J-108 Pg. 101
1,158,310	Inventor	Wilhelm H. Schulze
	Date	Oct. 26, 1915
	Title	App. for measuring the area of hides
	Seizure	Liber H-108 Pg. 253
1,160,908	Inventor	Philipp Koster
	Date	Nov. 16, 1915
	Title	Process for the production of gas from bituminous fuels in intermittent operations
	Seizure	Liber C-108 Pg. 333
1,169,942	Inventor	Georg Egly
	Date	Feb. 1, 1916

Patent No.		
	Title	Arc light electrode
	Seizure	Liber I-108 Pg. 374
1,172,568	Inventor	Fritz Schroter
	Date	Feb. 22, 1916
	Title	Methods of and app. for securing constancy in the light of vacuum tubes
	Seizure	Liber J 108 Pg. 39
1,178,858	Inventor	Emil Knoevenagel
	Date	April 11, 1916
	Title	Process of obtaining gases for heating purposes
	Seizure	Liber C-108 Pg. 332
1,187,282	Inventor	Michael Doetsch
	Date	June 13, 1916
	Title	Arc Lamp Electrodes
	Seizure	Liber H-108 Pg. 323
1,189,096	Inventor	Carl Grunwald
	Date	June 27, 1916
	Title	Pumping Apparatus
	Seizure	Liber B-108 Pg. 6
1,199,731	Inventor	Rudolf Ilgner
	Date	Sept. 26, 1916
	Title	Medical Appliance
	Seizure	Liber I-108 Pg. 54
1,204,779	Inventor	Hugo Junkers
	Date	Nov. 14, 1916
	Title	Water heating apparatus
	Seizure	Liber E-108 Pg. 443
1,209,102	Inventor	Hermann Anschutz-Kaempfe
	Date	Dec. 19, 1916
	Title	App. in determining deviation of bore holes from the vertical
	Seizure	Liber G-108 Pg. 193

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SCHEDULE A-15.

Patent No.		
1,221,039	Inventor	Georg Egly
	Date	April 3, 1917
	Title	Flame arc lamps and electrodes therefor
	Seizure	Liber E-108 Pg. 332
1,227,836	Inventor	Karl Schmid
	Date	May 29, 1917
	Title	Single-acting, condensing, continuous-current steam-engine.
	Seizure	Liber G-108 Pg. 398
1,235,505	Inventor	Johann Stanzig & R. Konig & J. Rosenthal
	Date	July 31, 1917
	Title	Fire Extinguishers
	Seizure	Liber D-108 Pg. 492
1,237,222	Inventor	Wilhelm G. Schroder
	Date	Aug. 14, 1917
	Title	Arrangements for homogenizing liquids
	Seizure	Liber G-108 Pg. 386
1,253,548	Inventor	Hans Wagner
	Date	Jan. 15, 1918
	Title	Methods and apparatus for transporting incompressible fluids
	Seizure	Liber H-108 Pg. 271
1,257,561	Inventor	Wilhelm Weber
	Date	Feb. 26, 1918
	Title	Chambering devices for rock drills
	Seizure	Liber E-108 Pg. 242

Recorded March 26, 1921.

DEFENDANT'S EXHIBIT No. 148.

Licensees of The Chemical Foundation Who Are Not Stockholders Thereof.

December 31, 1922.

Licensee	Address	Business
1. Adams X-Ray Company	Maple & Livard Sts., Detroit, Mich.	Therapeutic Apparatus
2. American Ethers Corporation,	c/o John A. Larkin, 44 Wall St., New York City	Cellulose Products
3. American Solder & Flux Co.,	2910 No. 16th St., Phila., Pa.	Solder and Flux
4. Atlantic Chemical Works	Bayway, Elizabeth, New Jersey.	Tanning Materials
5. Atmospheric Nitrogen Corporation	Syracuse, New York	Heavy Chemicals
6. Badger & Sons Co., E. B.	63 Pitt Street, Boston, Mass.	Chemical Engineers
7. Barnsdall Refining Company,	41 East 42nd St., New York City	Petroleum Oils
8. Bausch & Lomb Optical Co.,	Rochester, New York	Optical Apparatus
9. Baush Machine Tool Co.,	40 State Street, Boston, Mass.	Metallurgical Products
10. Bilhuber, Inc., E.	25 W. Broadway, New York City.	Pharmaceuticals
11. Brady & Co., Geo. W.	809 So. W. Ave., Chicago, Ill.	Therapeutic Apparatus
12. Brooklyn Color Works, Inc.,	Stewart Ave., & Cherry St., Brooklyn, New York.	Dyes
13. Burdick Cabinet Co.,	Milton, Wis.	Therapeutic Apparatus
14. California Ink Company, Inc.	West Berkeley, California.	Printing and Lithographic Inks
15. Carrie Gyroscopic Corporation, The	62 West 14th St., New York City.	Gyroscopes
16. Case-Woodland Drug Co., The	40th St. & Woodland Ave., Cleveland, Ohio.	Pharmaceuticals
17. Child, Albert Kennedy	611 W. 156th Street, New York City.	Metallurgical Products

Licensee	Address	Business
18. Cochrane Corporation, H. S. B. W.,	17th St. & Allegheny Ave., Philadelphia, Pa.	Water and Steam Apparatus
19. Diarsenol Laboratories, Inc.	904 Ellicott Sq., Buffalo, N. Y.	Pharmaceuticals
20. Eastman Kodak Company	Rochester, New York	Cameras, Films and Organic Chemicals
21. Engeln Electric Company, The	4601 Euclid Ave., Cleveland, Ohio.	Therapeutic Apparatus
22. Gaskill Chemical Corporation, The	157 Spencer St., Brooklyn, N. Y.	Dyes and Intermediates
23. Hawthorne Chemical Company,	1 Washington Ave., Hawthorne, N. J.	Tanning and Textile Chemicals
24. Huber, J. M.	65 West Houston St., New York City.	Printing and Lithographic Inks
25. Hydrosulphite Co., Inc., The	East Greenwich, R. I.	Textile Chemicals
26. Jaeger Research Laboratories, Inc.	68 Hudson St., Hoboken, N. J.	Electrical Apparatus
27. Jaenecke-Ault Company	Newark, New Jersey.	Printing and Lithographic Inks
28. Katode X-Ray Tube Co., Inc.	33 West 46th St., New York City	Therapeutic Apparatus
29. Keystone Roofing Mfg. Company,	York, Pa.	Roofing Products
30. Kohnstamm & Co., H.	83 Park Place, New York City	Dyes
31, Koppers Company, The	Union Arcade Bldg., Pittsburg, Pa.	Coke and Coke Ovens
32. Kuttroff, Pickhardt & Co., Inc.	128 Duane St., New York City.	Dyes and Chemicals
33. Leitz Inc., E.	30 E. 18th St., New York City.	Therapeutic and Scientific Apparatus
34. Liebel-Flarsheim Company, The	410-416 Home St., Cincinnati, Ohio.	Therapeutic Apparatus
35. Lysoform Corporation	81 Fulton St., New York City.	Pharmaceuticals
36. Machlett & Son, E.	153 E. 84th St., New York City.	Therapeutic and Scientific Apparatus

37. Magnetic Manufacturing Co.,	Milwaukee, Wis.	Magnetic Separators
38. Mallory & Co., Inc., P. R.	Portchester, New York	Electrical Apparatus
39. Maple Chemical Company, Inc.	122 Maple Ave., Staten Island, N. Y.	Dyes and Intermediates
40. Marshall, John G.	1752 Atlantic Avenue, Bklyn, N. Y.	Photographic Chemicals
	—2—	
41. Martin Cantine Company	Saugerties, New York	Printers Supplies
42. Metz, H. A.	122 Hudson Street, New York City.	Pharmaceuticals
43. Meyer Co., The Wm.	1644 No. Girard St., Chicago, Ill.	Therapeutic Apparatus
44. Norma Company of America, The	Anable Ave., Long Island City, N. Y.	Metallurgical Products
45. Novocol Chemical Mfg. Co., Inc.	2923 Atlantic Ave., Bklyn., N. Y.	Pharmaceuticals
46. Organic Laboratories Company, The	248 Senator Place, Cincinnati, O.	Insecticides and Pharmaceutical Preparations.
47. Pacific Flush-Tank Company,	4241 E. Ravenswood Ave., Chicago, Ill.	Sewage Disposal Apparatus
48. Rhodia Inc.	89 Fulton Street, New York City	Pharmaceuticals and Photographic Chemicals
49. Riverside & Dan River Cotton Mills, Inc.	Danville, Va.	Textile Goods
50. Rohm & Haas Company Inc.	40 N. Front St., Philadelphia, Pa.	Textile and Tanning Chemicals
51. Rosenthal Electric Laboratory,	Camden, New Jersey	Electrical Apparatus
52. Shaw Association, Inc., The	2610 No. Western Ave., Chicago, Ill.	Tanning Materials
53. Siegle Corporation of America, G.	Rosebank, Staten Island, New York.	Dyes
54. Sidio Company of America, Inc., The	37 Murray Street, New York City.	Quartz Ware.
55. Siemon & Elting	93 Nassau Street, New York City.	Printing and Lithographic Inks
56. Sigmund Ullman Company,	146th St. & Park Ave., New York City.	Printing and Lithographic Inks

Licensee	Address	Business
57. Sinclair & Valentine Co.,	21 St. Clair Place, New York City.	Printing and Lithographic Inks
58. Sperry Gyroscope Company, The	Manhattan Bridge Plaza, Bklyn, N. Y.	Gyroscopes
59. Stearns-Roger Manufacturing Co., The	Denver, Colo.	Metallurgical Products
60. Sturtevant Company, Inc., B. F.	Hyde Park, Boston, Mass.	Industrial Factory Equipment
61. Sun Chemical & Color Co.,	Harrison, New Jersey.	Printing and Lithographic Inks
62. Textile Alliance, Inc.,	45 East 17th St., New York City.	Dyes
63. Tower Manufacturing Co., Inc.	552 Pearl St., New York City.	Dyes and Chemicals
64. United States Procaine Company,	2923 Atlantic Avenue, Bklyn, N. Y.	Pharmaceuticals
65. Ultro Chemical Corporation	41 Union Square, New York City	Dyes
66. Van Dyk & Co.,	4-6 Platt Street, New York City.	Perfume Chemicals and Organic Products
67. Victor X-Ray Corporation,	236 So. Robey St., Chicago, Ill.	Therapeutic Apparatus
68. Violi, Claude	6 Temple St., Springfield, Mass.	Therapeutic Apparatus
69. Waite & Bartlett Manufacturing Company	53 Jackson Ave., Long Island City, N. Y.	Therapeutic Apparatus
70. Wappler Electric Company	162 Harris Ave., Long Island City, N. Y.	Therapeutic Apparatus
71. Wilhelm Company, The A.	Reading, Pa.	Paints and Varnishes
72. Yocum Laboratories, The	168 Coit St., Newark, N. J.	Tanning Materials.

DEFENDANT'S EXHIBIT No. 149.

Licensees of The Chemical Foundation Who Are Also Stockholders Thereof.

December 31, 1922

Licensee	Address	Business
1. Abbott Laboratories, The	4753 Ravenswood Ave., Chicago, Ill.	Pharmaceuticals
2. Aluminum Company of America	Pittsburgh, Pa.	Aluminum and Aluminum Alloys
3. American Cotton Oil Company, The	65 Broadway, New York City.	Vegetable Oils, Fats
4. Ault & Wiborg Company, The	Cincinnati, Ohio	Printing and Lithographic Inks
5. Barrett Company, The	17 Battery Place, New York City	Coal Tar Crudes and Intermediates, Tar Products
6. Butterworth-Judson Corporation,	30 Church Street, New York City	Dyes and Intermediates
7. Calco Chemical Company, The	Bound Brook, New Jersey	Dyes, Intermediates, Pharmaceuticals
8. Campbell & Co., John	75 Hudson Street, New York City	Dyes and Intermediates
9. Dow Chemical Company, The	Midland, Mich.	Dyes, Intermediates, Heavy Chemicals
10. DuPont de Nemours & Company, Inc., E. I.	Wilmington, Del.	Pharmaceuticals. Explosives, Dyes, Intermediates, Plastics, Heavy Chemicals
11. Hanovia Chemical & Mfg. Co.	Chestnut St. & N. J. R. R. Ave., Newark, New Jersey.	Therapeutic and Scientific Apparatus.
12. Heller & Merz Co., The	Wilson Ave., Newark, N. J.	Dyes and Intermediates

Licensee	Address	Business
13. Hooker Electrochemical Company,	40 Wall Street, New York City.	Heavy Chemicals
14. Klipstein & Sons Co., E. C.	654 Greenwich St., New York City.	Dyes, Intermediates, Heavy Chemicals
15. McKesson & Robbins	91 Fulton Street, New York City	Pharmaceuticals
16. Mallinckrodt Chemical Works,	St. Louis, Missouri	Pharmaceuticals, Heavy Chemicals
17. Merck & Co.	45 Park Place, New York City	Pharmaceuticals
18. Merrimac Chemical Co.	48 State Street, Boston, Mass.	Intermediates and Heavy Chemicals
19. Metz Laboratories, Inc., H. A.	122 Hudson Street, New York City	Pharmaceuticals
20. Monsanto Chemical Works	St. Louis, Missouri	Pharmaceuticals, Intermediates and Heavy Chemicals
21. National Aniline & Chemical Company, Inc.	40 Rector Street, New York City	Dyes, Intermediates, Heavy Chemicals
22. Newport Chemical Works, Inc.	Passaic, New Jersey	Dyes, Intermediates and Heavy Chemicals
23. Parke, Davis & Company	Detroit, Mich.	Pharmaceuticals
24. Powers-Weightman-Rosengarten Co.	Philadelphia, Pa.	Pharmaceuticals and Heavy Chemicals
25. Roessler & Hasslacher Chemical Company, The	706 Sixth Avenue, New York City.	Heavy Chemicals and Pharmaceuticals.
26. Semet-Solvay Company	Syracuse, New York.	Heavy Chemicals
27. Squibb & Sons, E. R.	80 Beekman Street, New York City.	Pharmaceuticals
28. Toch Brothers	110 East 42nd St., New York City.	Paints, Varnishes
29. United States Finishing Company, The	320 Broadway, New York City.	Textile Dyers and Printers
30. Upjohn Company, The	Kalamazoo, Mich.	Pharmaceuticals
31. Wolf & Co., Jacques	Passaic, New Jersey	Dyes, Intermediates, Textile Chemicals

DEFENDANT'S EXHIBIT No. 150.

(Copy)

OFFICE OF THE PRESIDENT OF THE UNITED STATES

Paris, 17 April, 1919.

My dear Mr. Palmer:

Please allow me again to extend my heartiest congratulations on your appointment as Attorney General. I am delighted over your election, and I can truly say that I do not know of any appointment that has met with such universal approval. The echoes that I get over here are that you are certainly making good.

I read the report which you sent me with a great deal of interest. Unfortunately, the President did not get an opportunity to read it on the GEORGE WASHINGTON, as he was sick part of the time coming over, and he was confronted with such an accumulation of correspondence and official documents that it was impossible for him to examine your report. However, I told him in detail about the contents, and he agreed that it was a wonderful accomplishment.

If you could see what the President is doing and accomplishing over here, notwithstanding the heavy odds that he is facing on all sides, you would appreciate more than ever his bigness of brain and force and vision, and last but not least, his wonderful courage.

With kindest regards and best wishes,

Sincerely yours,

(Sgd.) CARY T. GRAYSON.

Hon. A. Mitchell Palmer,
Attorney General,
Washington, D. C.

DEFENDANT'S EXHIBIT No. 151.

U. S. Patent No. 1,260,289, dated March 26, 1918.

(For copy of patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 152.

U. S. Patent No. 1.075,171, dated October 7, 1913.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 153.

U. S. Patent No. 1,045,759, dated November 26, 1912.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 154.

U. S. Patent No. 1,005,176, dated October 10, 1911.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 155.

U. S. Patent No. 812,554, dated February 13, 1906.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 156.

U. S. Patent No. 986,148, dated March 7, 1911.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 157.

U. S. Patent Re-issue No. 13,848, dated December 15, 1914.

(For copy of Patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 158.

STATEMENT PREPARED BY FRANKLIN W. HOBBS SHOWING PRINCIPAL DYES USED BY ARLINGTON MILLS, AND FIRMS FROM WHOM PURCHASED.

CHROME BLUE BLACK

Alizarine Blue Black B. N	Calco Chemical Company
Omego Blue Black R	Sandoz Chemical Works Inc.
Kromeko Blue Black 6 B	John Campbell & Company
Chrome Black B	H. A. Metz & Company, Inc.
Anthranol Chrome Blue Black A R	U. S. Color & Chemical Co.
Diamond Blue Black R	Grasselli Chemical Co. of Mass.
Pontachrome Blue Black R	E. I. du Pont de Nemours & Co.
Superchrome Blue B Ex.	National Aniline & Chemical Co.
Newport Chrome Black V	Newport Chemical Works
Amaco Chrome Blue Black B	National Aniline & Chemical Co.
Pontachrome Black 6 B Ex.	E. I. du Pont de Nemours & Co.
Chrome Cyanine R	Standard Color Company

BLUE GROUP

Quotations received on Buffalo Fast Blue R. manufactured by the National Aniline & Chemical Company, and also prices obtained on corresponding colors from other manufacturers.

Buffalo Fast Blue R.	National Aniline & Chemical Co.
Sulphon Acid Blue R. A.	Grasselli Chemical Co.
Pontacyl Sulphon Blue R.	E. I. du Pont de Nemours & Co.
Sulphon Acid Blue R.	U. S. Color & Chemical Co.
Acko Fast Blue R. R. A.	John Campbell & Co.

SULPHON CYANINE GROUP

Cyanone Blue 3R—100%	National Aniline & Chemical Co.
Pontacyl Blue 5R-150%	Du Pont
Sulphon Cyanine 5R A-105%	Grasselli Chemical Co.

DIAMINE BLACK BH GROUP

Amidine Diazo Black BHSW	John Campbell & Co.
Amidine Diazo Black BHO	John Campbell & Co.
Diazine Black H	National Aniline & Chem. Co.
Diazo Black H	E. I. duPont de Nemours & Co.
Aminal Developed Black AML	American Aniline Products Co.
Terrazode Black BH	American Dyewood Co.
Diazo Black BH	Newport Chemical Works

Diazophenyl Black BH	Geigy Co., Inc.
Diazo Black BHN	Grasselli Chemical Co.
Developed Black BH Ex.	U. S. Color & Chem. Co.
Pontamine Diazo Black	E. I. duPont de Nemours & Co.
Developed Black BH Conc.	Dunker & Perkins
Diazo Fast Black BH	Special Products Co.
Chloramine Black BH	Sandoz Chem. Works Inc.
Melanthrene Black BHX	Ciba Co. Inc.

BROWN

Amaco Chrome Brown M N	Beckers (National Aniline & Chem. Co.)
Alizarole Brown R B	Beckers (National Aniline & Chem. Co.)
Alizarine Brown B	Calco Chemical Co.
Lanachrome Brown L B	Wm. T. Miller Aniline & Chem. Co.
Chrome Brown	Marden Orth & Hastings Corp.
Pontachrome Brown M W	E. I. du Pont de Nemours & Co., Inc.
Pontachrome Brown M N	E. I. du Pont de Nemours & Co., Inc.

DIAZO BLACK

Developed Black BH	Newport Chemical Co.
Diazo Black B H S W	John Campbell Co.
Pontamine Diazo Black B H	Du Pont
Diazo Black B H N Extra	Grasselli Chemical Co.
Developed Black B H N	U. S. Color

DEFENDANT'S EXHIBIT No. 159.

STATEMENT PREPARED BY FRANKLIN W. HOBBS.
ARLINGTON MILLS.

These five dyes cover 80% of the requirements:

Chrome Blue—Schultz No. 181
Sulphon Acid Blue R—Schultz No. 188.
Sulphon Cyanine 5 R—Schultz No. 257.
Diazine Black H Extra—Schultz No. 333.
Naphtylamine Black 10 B—Schultz No. 217.
Du Pont
U. S. Color Co.
John Campbell

Naphtylamine Black 10 B—Schultz No. 217.

1916—July—National Aniline
1918—February—Bayer Co.
1919—January—Aniline Dyes & Chemical Co.
1919—April—Du Pont
1919—May—H. A. Metz
1920—July—Standard Color Co.

Also now made by

Chemical Co. of America
A. Klipstein
Bachmeir & Co.
Read Halliday Co.
American Aniline Products Co.
Atlantic Dyestuff Corporation
Newport Chemical Works
Grasselli
Jennings & Co.
John Campbell
Ciba Co.

ARLINGTON MILLS

MEMO WITH REFERENCE TO DYES OFFERED

Gallocynanine. Schultz No. 626.

1915—July—W. Beckers.
1917—December—American Aniline Products Co.
1918—June—H. A. Metz.
1918—June—Marden, Orth & Hastings.

Alizarine Yellow 2 G. Schultz No. 48.

1917—June—W. Beckers
Soon after—U. S. Color & Chemical Co.
" " Bayer Co.
" " Farbwerke-Hoechst
" " Badische
" " John Campbell
Later—American Aniline Products Co.

Chrome Brown—Schultz No. 89.

1917—June—W. Beckers
1918—July—National Aniline
Later—Calco Chemical Co.
Du Pont
Several others

Chrome Blue or Black—Schultz No. 181.

1918—July—National Aniline
1919—March—Grasselli
1919—December—Du Pont
1920—March—Standard Color Co.
1920—October—Sandoz Chemical Works
1921—July—Calco Chemical Co.
1921—July—U. S. Color Co.
1921—September—H. A. Metz
1922—July—Ciba Co.
1923—March—Newport Chemical Co.
1923—March—John Campbell

Sulphon Acid Blue R—Schultz No. 188.

1917—December—National Aniline
1921—January—John Campbell
1921—February—Grasselli Chemical Co.
1921—July—U. S. Color Co.
1922—November—Du Pont

Sulphon Cyanine 5 R—Schultz No. 257.

1917—December—National Aniline
1921—June—Du Pont
1921—November—U. S. Color Co.
1923—June—John Campbell

Diazine Black H. Extra. Schultz No. 333.

1917— National Aniline
Grasselli

DEFENDANT'S EXHIBIT No. 160.

STATEMENT PREPARED BY FRANKLIN W. HOBBS OF ARLINGTON MILLS.

SULPHON CYANINE 5 R A

March 23, 1923	Grasselli	.70
" " "	National	.80
" " "	U. S. Color	.90
" " "	Du Pont	1.10
Feb. 9, 1923	National	.78
Feb. 6, 1923	Du Pont	1.10
Feb. 6, 1923	Grasselli	.70
Dec. 22, 1921	Grasselli	1.05
Nov. 19, 1921	National	1.10
Nov. 15, 1921	Grasselli	1.10
Nov. 4, 1921	Grasselli	1.20

Nov. 1, 1921	National	1.25
Oct. 23, 1921	Grasselli	1.25
Oct. 26, 1921	Grasselli	1.30
Oct. 14, 1921	National	1.25
Oct. 8, 1921	Ciba	1.62
Oct. 4, 1921	Levinstein	1.65
Oct. 3, 1921	Du Pont	2.00
Sept. 27, 1921	Grasselli	1.40
Sept. 19, 1921	Grasselli	1.35
Sept. 16, 1921	National	1.50
Sept. 15, 1921	Grasselli	1.40
Aug. 5, 1921	Ciba	1.50
June 14, 1921	Du Pont	2.30
June 2, 1921	National	1.85
May 2, 1921	Grasselli	1.80
March 23, 1921	Grasselli	1.80
Feb. 25, 1921	Ciba	1.65
Feb. 16, 1921	Grasselli	1.90
Jan. 25, 1921	National	2.15
Nov. 10, 1920	Levinstein	2.15
Sept, 28, 1920	Grasselli	2.00
May 1, 1919	National	2.25
May 21, 1918	National	2.15
Dec. 19, 1917	National	2.25

DEFENDANT'S EXHIBIT No. 161.

STATEMENT PREPARED BY FRANKLIN W. HOBBS OF ARLINGTON MILLS.

SULPHON ACID BLUE GROUP

July 9, 1923	Grasselli	.70
Dec. 29, 1922	Grasselli	.65
" " "	National	.85
" " "	Du Pont	.95

Nov. 9, 1922	National	.55
Oct. 19, 1922	U. S. Color	.70
" 16, 1922	Campbell	.62-.65
Sept. 1922	Grasselli	.60
" "	Du Pont	1.00
" "	National	.55
" "	Campbell	.62
Feb. 10, 1922	U. S. Color	.85
" " "	Grasselli	.90
" " "	National	.90
" " "	Campbell	.95
Dec. 5, 1921	Campbell	1.15
Nov. 18, 1921	Campbell	1.30
Nov. 1, 1921	Campbell	1.35
Sept. 22, 1921	Campbell	1.60
July 6, 1921	National	1.60
June 9, 1921	Campbell	1.75
Mar. 22, 1921	Campbell	1.90
Dec. 10, 1920	U. S. Color	1.95
Nov. 9, 1920	U. S. Color	2.10
Mar. 4, 1919	National	2.15

DEFENDANT'S EXHIBIT No. 162.

STATEMENT PREPARED BY FRANKLIN W. HOBBS OF ARLINGTON MILLS.

CHROME BLUE BLACK GROUP

March 15, 1923	Various, 9 firms	52-67¢
Jan. 1923	Grasselli	70¢
Nov. 1922	Calco Co.	45¢
Oct. 24, 1922	U. S. Color	55¢
Sept. 27, 1922	Grasselli	75¢
Sept. 12, 1922	Calco Co.	48¢

July	1922	Calco Co.	52¢
Nov.	1, 1921	U. S. Color	68¢
Aug.	4, 1921	U. S. Color	75¢
July	22, 1921	National	80¢
July	19, 1921	U. S. Color	75¢
July	12, 1921	National	80¢
July	11, 1921	Standard	70¢
Mar.	16, 1921	Standard	84¢
Sept.	11, 1920	Standard	75¢
July	19, 1920	U. S. Color	1.35
May	24, 1920	U. S. Color	1.30
Jan.	28, 1920	U. S. Color	1.40
Jan.	6, 1920	Grasselli	1.25
Mar.	18, 1919	Grasselli	1.65

DEFENDANT'S EXHIBIT No. 163.

STATEMENT PREPARED BY FRANKLIN W. HOBBS OF ARLINGTON MILLS.

DIAZO BLACK

Feb. 24, 1923	Grasselli	.73
" " "	National	.70
" " "	Du Pont	.65
" " "	Campbell	.61
Jan. 8, 1922	Campbell	1.10
Nov. 9, 1921	Newport	1.20
Sept. 6, 1921	Campbell	1.38
Aug. 19, 1921	Newport	1.40
Aug. 13, 1921	American Aniline	1.45
July 29, 1921	Du Pont	1.40
June 10, 1921	Newport	1.50
June 3, 1921	Ciba	1.50
Feb. 2, 1921	Du Pont	1.60
Jan. 21, 1921	Newport	1.60

Dec.	15, 1920	Du Pont	1.80
Oct.	4. 1920	Du Pont	1.80
May	27, 1920	U. S. Color	2.50
Feb.	6, 1920	Newport	2.40
Jan.	21, 1920	Du Pont	2.75
Dec.	30, 1919	Newport	2.40
Sept.	27, 1919	Campbell	2.90
July	30, 1919	Campbell	2.25

DEFENDANT'S EXHIBIT No. 164.

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES

Communicated to the Two Houses of Congress at the Beginning of the First Session of the Sixty-sixth Congress

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MESSAGE.

GENTLEMEN OF THE CONGRESS: I deeply regret my inability to be present at the opening of the extraordinary session of the Congress. It still seems to be my duty to take part in the counsels of the peace conference and contribute what I can to the solution of the innumerable questions to whose settlement it has had to address itself: for they are questions which affect the peace of the whole world and from them, therefore, the United States cannot stand apart. I deemed it my duty to call the Congress together at this time because it was not wise to postpone longer the provisions which must be made for the support of the government. Many of the appropriations which are absolutely necessary for the maintenance of the

government and the fulfillment of its varied obligations for the fiscal year 1919-1920 have not yet been made; the end of the present fiscal year is at hand; and action upon these appropriations can no longer be prudently delayed. It is necessary, therefore, that I should immediately call your attention to this critical need. It is hardly necessary for me to urge that it may receive your prompt attention.

I shall take the liberty of addressing you on my return on the subjects which have most engrossed our attention and the attention of the world during these last anxious months, since the armistice of last November was signed, the international settlements which must form the subject matter of the present treaties of peace and of our national action in the immediate future. It would be premature to discuss them or to express a judgment about them before they are brought to their complete formulation by the agreements which are now being sought at the table of the conference. I shall hope to lay them before you in their many aspects so soon as arrangements have been reached.

I hesitate to venture any opinion or press any recommendation with regard to domestic legislation while absent from the United States and out of daily touch with intimate sources of information and counsel. I am conscious that I need, after so long an absence from Washington, to seek the advice of those who have remained in constant contact with domestic problems and who have known them close at hand from day to day; and I trust that it will very soon be possible for me to do so. But there are several questions pressing for consideration to which I feel that I may, and indeed must, even now direct your attention, if only in general terms. In speaking of them I shall, I dare say, be doing little more than speak your own

thoughts. I hope that I shall speak your own judgment also.

The question which stands at the front of all others in every country amidst the present great awakening is the question of labour; and perhaps I can speak of it with as great advantage while engrossed in the consideration of interests which affect all countries alike as I could at home and amidst the interests which naturally most affect my thought, because they are the interests of our own people.

By the question of labour I do not mean the question of efficient industrial production, the question of how labour is to be obtained and made effective in the great process of sustaining populations and winning success amidst commercial and industrial rivalries. I mean that much greater and more vital question, how are the men and women who do the daily labour of the world to obtain progressive improvement in the conditions of their labour, to be made happier, and to be served better by the communities and the industries which their labour sustains and advances? How are they to be given their right advantage as citizens and human beings?

We cannot go any further in our present direction. We have already gone too far. We cannot live our right life as a nation or achieve our proper success as an industrial community if capital and labour are to continue to be antagonistic instead of being partners. If they are to continue to distrust one another and contrive how they can get the better of one another. Or, what perhaps amounts to the same thing, calculate by what form and degree of coercion they can manage to extort on the one hand work enough to make enterprise profitable, on the other justice and fair treatment enough to make life tolerable. That bad road has turned out a blind alley. It is no thoroughfare to real prosperity. We must find

another, leading in another direction and to a very different destination. It must lead not merely to accommodation but also to a genuine cooperation and partnership based upon a real community of interest and participation in control.

There is now in fact a real community of interest between capital and labour, but it has never been made evident in action. It can be made operative and manifest only in a new organization of industry. The genius of our business men and the sound practical sense of our workers can certainly work such a partnership out when once they realize exactly what it is that they seek and sincerely adopt a common purpose with regard to it.

Labour legislation lies, of course, chiefly with the states; but the new spirit and method of organization which must be effected are not to be brought about by legislation so much as by the common counsel and voluntary cooperation of capitalist, manager, and workman. Legislation can go only a very little way in commanding what shall be done. The organization of industry is a matter of corporate and individual initiative and of practical business arrangement. Those who really desire a new relationship between capital and labour can readily find a way to bring it about; and perhaps Federal legislation can help more than state legislation could.

The object of all reform in this essential matter must be the genuine democratization of industry, based upon a full recognition of the right of those who work, in whatever rank, to participate in some organic way in every decision which directly affects their welfare or the part they are to play in industry. Some positive legislation is practicable. The Congress has already shown the way to one reform which should be worldwide, by establishing the eight hour day as the standard day in every field of labour over which

it can exercise control. It has sought to find the way to prevent child labour, and will, I hope and believe, presently find it. It has served the whole country by leading the way in developing the means of preserving and safeguarding life and health in dangerous industries. It can now help in the difficult task of giving a new form and spirit to industrial organization by coordinating the several agencies of conciliation and adjustment which have been brought into existence by the difficulties and mistaken policies of the present management of industry, and by setting up and developing new Federal agencies of advice and information which may serve as a clearing house for the best experiments and the best thought on this great matter, upon which every thinking man must be aware that the future development of society directly depends. Agencies of international counsel and suggestion are presently to be created in connection with the League of Nations in this very field; but it is national action and the enlightened policy of individuals, corporations, and societies within each nation that must bring about the actual reforms. The members of the committees on labour in the two houses will hardly need suggestions from me as to what means they shall seek to make the Federal Government the agent of the whole nation in pointing out and, if need be, guiding the process of reorganization and reform.

I am sure that it is not necessary for me to remind you that there is one immediate and very practical question of labour that we should meet in the most liberal spirit. We must see to it that our returning soldiers are assisted in every practicable way to find the places for which they are fitted in the daily work of the country. This can be done by developing and maintaining upon an adequate scale the admirable organization created by the Department of Labor for placing men seeking work; and it can also be done,

in at least one very great field, by creating new opportunities for individual enterprise. The Secretary of the Interior has pointed out the way by which returning soldiers may be helped to find and take up land in the hitherto undeveloped regions of the country which the Federal Government has already prepared or can readily prepare for cultivation and also on many of the cutover or neglected areas which lie within the limits of the older states; and I once more take the liberty of recommending very urgently that his plans shall receive the immediate and substantial support of the Congress.

Peculiar and very stimulating conditions await our commerce and industrial enterprise in the immediate future. Unusual opportunities will presently present themselves to our merchants and producers in foreign markets, and large fields for profitable investment will be opened to our free capital. But it is not only of that that I am thinking; it is not chiefly of that that I am thinking. Many great industries prostrated by the war wait to be rehabilitated, in many parts of the world where what will be lacking is not brains or willing hands or organizing capacity or experienced skill, but machinery and raw materials and capital. I believe that our business men, our merchants, our manufacturers, and our capitalists, will have the vision to see that prosperity in one part of the world ministers to prosperity everywhere: that there is in a very true sense a solidarity of interest throughout the world of enterprise, and that our dealings with the countries that have need of our products and our money will teach them to deem us more than ever friends whose necessities we seek in the right way to serve.

Our new merchant ships, which have in some quarters been feared as destructive rivals, may prove

helpful rivals, rather, and common servants, very much needed and very welcome. Our great shipyards, new and old, will be so opened to the use of the world that they will prove immensely serviceable to every maritime people in restoring, much more rapidly than would otherwise have been possible, the tonnage wantonly destroyed in the war. I have only to suggest that there are many points at which we can facilitate American enterprise in foreign trade by opportune legislation and make it easy for American merchants to go where they will be welcomed as friends rather than as dreaded antagonists. America has a great and honorable service to perform in bringing the commercial and industrial undertakings of the world back to their old scope and swing again, and putting a solid structure of credit under them. All our legislation should be friendly to such plans and purposes.

And credit and enterprise alike will be quickened by timely and helpful legislation with regard to taxation. I hope that the Congress will find it possible to undertake an early reconsideration of Federal taxes, in order to make our system of taxation more simple and easy of administration and the taxes themselves as little burdensome as they can be made and yet suffice to support the Government and meet all its obligations. The figures to which those obligations have arisen are very great indeed, but they are not so great as to make it difficult for the nation to meet them, and meet them, perhaps, in a single generation, by taxes which will neither crush nor discourage. These are not so great as they seem, not so great as the immense sums we have had to borrow, added to the immense sums we have had to raise by taxation, would seem to indicate; for a very large proportion of those sums were raised in order that they might be loaned to the governments with which we were associated in the war, and those loans will, of course,

constitute assets, not liabilities, and will not have to be taken care of by our taxpayers.

The main thing we shall have to care for is that our taxation shall rest as lightly as possible on the productive resources of the country, that its rates shall be stable, and that it shall be constant in its revenue yielding power. We have found the main sources from which it must be drawn. I take it for granted that its mainstays will henceforth be the income tax, the excess profits tax, and the estate tax. All these can so be adjusted to yield constant and adequate returns and yet not constitute a too grievous burden on the taxpayer. A revision of the income tax has already been provided for by the act of 1918, but I think you will find that further changes can be made to advantage both in the rates of the tax and in the method of its collection. The excess profits tax need not long be maintained at the rates which were necessary while the enormous expenses of the war had to be borne; but it should be made the basis of a permanent system which will reach undue profits without discouraging the enterprise and activity of our business men. The tax on inheritances ought, no doubt, to be reconsidered in its relation to the fiscal systems of the several states, but it certainly ought to remain a permanent part of the fiscal system of the Federal government also.

Many of the minor taxes provided for in the revenue legislation of 1917 and 1918, though no doubt made necessary by the pressing necessities of the war time, can hardly find sufficient justification under the easier circumstances of peace, and can now happily be got rid of. Among these, I hope you will agree, are the excises upon various manufacturers and the taxes upon retail sales. They are unequal in the incidence on different industries and on different individuals. Their collection is difficult and expensive.

Those which are levied upon articles sold at retail are largely evaded by the readjustment of retail prices. On the other hand, I should assume that it is expedient to maintain a considerable range of indirect taxes; and the fact that alcoholic liquors will presently no longer afford a source of revenue by taxation makes it the more necessary that the field should be carefully restudied in order that equivalent sources of revenue may be found which it will be legitimate, and not burdensome, to draw upon. But you have at hand in the Treasury Department many experts who can advise you upon the matters much better than I can. I can only suggest the lines of a permanent and workable system, and the placing of the taxes where they will least hamper the life of the people.

There is, fortunately, no occasion for undertaking in the immediate future any general revision of our system of import duties. No serious danger of foreign competition now threatens American industries. Our country has emerged from the war less disturbed and less weakened than any of the European countries which are our competitors in manufacture. Their industrial establishments have been subjected to greater strain than ours, their labour force to a more serious disorganization, and this is clearly not the time to seek an organized advantage. The work of mere reconstruction will, I am afraid, tax the capacity and the resources of their people for years to come. So far from there being any danger or need of accentuated foreign competition, it is likely that the conditions of the next few years will greatly facilitate the marketing of American manufactures abroad. Least of all should we depart from the policy adopted in the Tariff Act of 1913, of permitting the free entry into the United States of the raw materials needed to supplement and enrich our own abundant supplies.

Nevertheless, there are parts of our tariff sys-

tem which need prompt attention. The experiences of the war have made it plain that in some cases too great reliance on foreign supply is dangerous, and that in determining certain parts of our tariff policy domestic considerations must be borne in mind which are poliitcal as well as economic. Among the industries to which special consideration should be given is that of the manufacture of dyestuffs and related chemicals. Our complete dependence upon German supplies before the war made the interruption of trade a cause of exceptional economic disturbance. The close relation between the manufacturer of dyestuffs, on the one hand, and of explosives and poisonous gases, on the other, moreover, has given the industry an exceptional significance and value. Although the United States will gladly and unhesitatingly join in the programme of international disarmament, it will, nevertheless, be a policy of obvious prudence to make certain of the successful maintenance of many strong and well equipped chemical plants. The German chemical industry, with which we will be brought into competition, was and may well be again, a thoroughly knit monopoly capable of exercising a competition of a peculiarly insidious and dangerous kind.

The United States should, moreover, have the means of properly protecting itself whenever our trade is discriminated against by foreign nations, in order that we may be assured of that equality of treatment which we hope to accord and to promote the world over. Our tariff laws as they now stand provide no weapon of retaliation in case other governments should enact legislation unequal in its bearing on our products as compared with the products of other countries. Though we are as far as possible from desiring to enter upon any course of retaliation, we must frankly face the fact that hostile legislation by other nations is not beyond the range of possibility, and that it

may have to be met by counter legislation. This subject, has, fortunately, been exhaustively investigated by the United States Tariff Commission. A recent report of that Commission has shown very clearly that we lack and that we ought to have the instruments necessary for the assurance of equal and equitable treatment. The attention of the Congress has been called to this matter on past occasions, and the past measures which are now recommended by the Tariff Commission are substantially the same that have been suggested by previous administrations. I recommend that this phase of the tariff question receive the early attention of the Congress.

Will you not permit me, turning from these matters, to speak once more and very earnestly of the proposed amendment to the Constitution which would extend the suffrage to women and which passed the House of Representatives at the last session of the Congress? It seems to me that every consideration of justice and of public advantage calls for the immediate adoption of that amendment and its submission forthwith to the legislatures of the several states. Throughout all the world this long delayed extension of the suffrage is looked for; in the United States, longer, I believe, than anywhere else, the necessity for it, and the immense advantage of it to the national life, has been urged and debated, by women and men who saw the need for it and urged the policy of it when it required steadfast courage to be so much beforehand with the common conviction; and I, for one, covet for our country the distinction of being among the first to act in a great reform.

The telegraph and telephone lines will of course be returned to their owners so soon as the retransfer can be effected without administrative confusion, so soon, that is, as the change can be made with least possible inconvenience to the public and to the owners

themselves. The railroads will be handed over to their owners at the end of the calendar year; if I were in immediate contact with the administrative questions which must govern the retransfer of the telegraph and telephone lines, I could name the exact date for their return also. Until I am in direct contact with the practical questions involved I can only suggest that in the case of the telegraphs and telephones, as in the case of the railways, it is clearly desirable in the public interest that some legislation should be considered which may tend to make of these indispensable instrumentalities of our modern life a uniform and coordinated system which will afford those who use them as complete and certain means of communication with all parts of the country as has so long been afforded by the postal system of the Government, and at rates as uniform and intelligible. Expert advice is, of course, available in this very practical matter, and the public interest is manifest. Neither the telegraph nor the telephone service of the country can be said to be in any sense a national system. There are many confusions and inconsistencies of rates. The scientific means by which communication by such instrumentalities could be rendered more thorough and satisfactory has not been made full use of. An exhaustive study of the whole question of electrical communication and of the means by which the central authority of the nation can be used to unify and improve it, if undertaken, by the appropriate committees of the Congress, would certainly result, indirectly even if not directly, in a great public benefit.

The demobilization of the military forces of the country has progressed to such a point that it seems to me entirely safe now to remove the ban upon the manufacture and sale of wines and beers, but I am advised that without further legislation I have not the legal authority to remove the present restrictions.

I therefore recommend that the Act approved November 21, 1918, entitled, "An Act to enable the Secretary of Agriculture to carry out, during the fiscal year ending June 30, 1919, the purposes of the Act entitled 'An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products,' and for other purposes," be amended or repealed in so far as it applies to wines and beers.

I sincerely trust that I shall very soon be at my post in Washington again to report upon the matters which made my presence at the peace table apparently imperative, and to put myself at the service of the Congress in every matter of administration or counsel that may seem to demand executive action or advice.

WOODROW WILSON.

20 May, 1919.

DEFENDANT'S EXHIBIT No. 165.

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES
COMMUNICATED TO THE TWO HOUSES
OF CONGRESS AT THE BEGINNING OF
THE SECOND SESSION OF THE SIXTY-
SIXTH CONGRESS.

DECEMBER 2, 1919.

MESSAGE.

To the Senate and House of Representatives:

I sincerely regret that I cannot be present at the opening of this session of the Congress. I am thus

prevented from presenting in as direct a way as I could wish the many questions that are pressing for solution at this time. Happily, I have had the advantage of the advice of the heads of the several executive departments who have kept in close touch with affairs in their detail and whose thoughtful recommendations I earnestly second.

In the matter of the railroads and the readjustment of their affairs growing out of federal control, I shall take the liberty at a later date of addressing you.

I hope that Congress will bring to a conclusion at this session legislation looking to the establishment of a budget system. That there should be one single authority responsible for the making of all appropriations and that appropriations should be made not independently of each other, but with reference to one single comprehensive plan of expenditure properly related to the nation's income there can be no doubt. I believe the burden of preparing the budget must, in the nature of the case, if the work is to be properly done and responsibility concentrated instead of divided, rest upon the executive. The budget so prepared should be submitted to and approved or amended by a single committee of each House of Congress and no single appropriation should be made by the Congress, except such as may have been included in the budget prepared by the executive or added by the particular committee of Congress charged with the budget legislation.

Another and not less important aspect of the problem is the ascertainment of the economy and efficiency with which the moneys appropriated are expended. Under existing law the only audit is for the purpose of ascertaining whether expenditures have been lawfully made within the appropriations. No one is authorized or equipped to ascertain whether the money has been spent wisely, economically and effectively. The audi-

tors should be highly trained officials with permanent tenure in the Treasury Department, free of obligations to or motives of consideration for this or any subsequent administration, and authorized and empowered to examine into and make report upon the methods employed and the results obtained by the executive departments of the Government. Their reports should be made to the Congress and to the Secretary of the Treasury.

I trust that the Congress will give its immediate consideration to the problem of future taxation. Simplification of the income and profits taxes has become an immediate necessity. These taxes performed indispensable service during the war. They must, however, be simplified, not only to save the taxpayer inconvenience and expense, but in order that his liability may be made certain and definite.

With reference to the details of the Revenue Law, the Secretary of the Treasury and the Commissioner of Internal Revenue will lay before you for your consideration certain amendments necessary or desirable in connection with the administration of the law—recommendations which have my approval and support. It is of the utmost importance that in dealing with this matter the present law should not be disturbed so far as regards taxes for the calendar year 1920, payable in the calendar year 1921. The Congress might well consider whether the higher rates of income and profits taxes can in peace times be effectively productive of revenue, and whether they may not, on the contrary, be destructive of business activity and productive of waste and inefficiency. There is a point at which in peace times high rates of income and profits taxes discourage energy, remove the incentive to new enterprise, encourage extravagant expenditures and produce industrial stagnation with consequent unemployment and other attendant evils.

The problem is not an easy one. A fundamental change has taken place with reference to the position of America in the world's affairs. The prejudice and passions engendered by decades of controversy between two schools of political and economic thought,—the one believers in protection of American industries, the other believers in tariff for revenue only,—must be subordinated to the single consideration of the public interest in the light of utterly changed conditions. Before the war America was heavily the debtor of the rest of the world and the interest payments she had to make to foreign countries on American securities held abroad, the expenditures of American travelers abroad and the ocean freight charges she had to pay to others, about balanced the value of her pre-war favorable balance of trade. During the war America's exports have been greatly stimulated, and increased prices have increased their value. On the other hand, she has purchased a large proportion of the American securities previously held abroad, has loaned some $9,000,000,000 to foreign governments, and has built her own ships. Our favorable balance of trade has thus been greatly increased and Europe has been deprived of the means of meeting it heretofore existing. Europe can have only three ways of meeting the favorable balance of trade in peace times: by imports into this country of gold or of goods, or by establishing new credits. Europe is in no position at the present time to ship gold to us nor could we contemplate large further imports of gold into this country without concern. The time has nearly passed for international governmental loans and it will take time to develop in this country a market for foreign securities. Anything, therefore, which would tend to prevent foreign countries from settling for our exports by shipments of goods into this country could only have the effect of preventing them from paying for our exports and therefore of preventing the ex-

ports from being made. The productivity of the country greatly stimulated by the war must find an outlet by exports to foreign countries and any measures taken to prevent imports will inevitably curtail exports, force curtailment of production, load the banking machinery of the country with credits to carry unsold products and produce industrial stagnation and unemployment. If we want to sell, we must be prepared to buy. Whatever, therefore, may have been our views during the period of growth of American business concerning tariff legislation, we must now adjust our own economic life to a changed condition growing out of the fact that American business is full grown and that America is the greatest capitalist in the world.

No policy of isolation will satisfy the growing needs and opportunities of America. The provincial standards and policies of the past, which have held American business as if in a strait-jacket, must yield and give way to the needs and exigencies of the new day in which we live, a day full of hope and promise for American business, if we will but take advantage of the opportunities that are ours for the asking. The recent war has ended our isolation and thrown upon us a great duty and responsibility. The United States must share the expanding world market. The United States desires for itself only equal opportunity with the other nations of the world, and that through the process of friendly cooperation and fair competition the legitimate interests of the nations concerned may be successfully and equitably adjusted.

There are other matters of importance upon which I urged action at the last session of Congress which are still pressing for solution. I am sure it is not necessary for me again to remind you that there is one immediate and very practicable question resulting from the war which we should meet in the most liberal spirit. It is a matter of recognition and relief to our

soldiers. I can do no better than to quote from my last message urging this very action:

"We must see to it that our returning soldiers are assisted in every practicable way to find the places for which they are fitted in the daily work of the country. This can be done by developing and maintaining upon an adequate scale the admirable organization created by the Department of Labor for placing men seeking work; and it can also be done, in at least one very great field, by creating new opportunities for individual enterprise. The Secretary of the Interior has pointed out the way by which returning soldiers may be helped to find and take up land in the hitherto undeveloped regions of the country which the Federal Government has already prepared or can readily prepare for cultivation and also on many of the cutover or neglected areas which lie within the limits of the older states; and I once more take the liberty of recommending very urgently that his plans shall receive the immediate and substantial support of the Congress."

In the matter of tariff legislation, I beg to call your attention to the statements contained in my last message urging legislation with reference to the establishment of the chemical and dyestuffs industry in America:

"Among the industries to which special consideration should be given is that of the manufacture of dyestuffs and related chemicals. Our complete dependence upon German supplies before the war made the interruption of trade a cause of exceptional economic disturbance. The close relation between the manufacture of dyestuffs, on the one hand, and of explosives and poisonous gases, on the other, moreover, has given the industry an exceptional significance and value. Although the United States will gladly and unhesitatingly join in the programme of

international disarmament, it will, nevertheless, be a policy of obvious prudence to make certain of the successful maintenance of many strong and well-equipped chemical plants. The German chemical industry, with which we will be brought into competition, was and may well be again, a thoroughly knit monopoly capable of exercising a competition of a peculiarly insidious and dangerous kind."

During the war the farmer performed a vital and willing service to the nation. By materially increasing the production of his land, he supplied America and the Allies with the increased amounts of food necessary to keep their immense armies in the field. He indispensably helped to win the war. But there is now scarcely less need of increasing the production in food and the necessaries of life. I ask the Congress to consider means of encouraging effort along these lines. The importance of doing everything possible to promote production along economical lines, to improve marketing, and to make rural life more attractive and healthful, is obvious. I would urge approval of the plans already proposed to the Congress by the Secretary of Agriculture, to secure the essential facts required for the proper study of this question, through the proposed enlarged programmes for farm management studies and crop estimates. I would urge, also the continuance of federal participation in the building of good roads, under the terms of existing law and under the direction of present agencies; the need of further action on the part of the States and the Federal Government to preserve and develop our forest resources, especially through the practice of better forestry methods on private holdings and the extension of the publicly owned forests; better support for country schools and the more definite direction of their courses of study along lines

related to rural problems; and fuller provision for sanitation in rural districts and the building up of needed hospital and medical facilities in these localities. Perhaps the way might be cleared for many of these desirable reforms by a fresh, comprehensive survey made of rural conditions by a conference composed of representatives of the farmers and of the agricultural agencies responsible for leadership.

I would call your attention to the widespread condition of political restlessness in our body politic. The causes of this unrest, while various and complicated, are superficial rather than deep seated. Broadly, they arise from or are connected with the failure on the part of our Government to arrive speedily at a just and permanent peace permitting return to normal conditions, from the transfusion of radical theories from seething European centers pending such delay, from heartless profiteering resulting in the increase of the cost of living, and lastly from the machinations of passionate and malevolent agitators. With the return to normal conditions, this unrest will rapidly disappear. In the meantime, it does much evil. It seems to me that in dealing with this situation Congress should not be impatient or drastic but should seek rather to remove the causes. It should endeavor to bring our country back speedily to a peace basis, with ameliorated living conditions under the minimum of restrictions upon personal liberty that is consistent with our reconstruction problems. And it should arm the Federal Government with power to deal in its criminal courts with those persons who by violent methods would abrogate our time-tested institutions. With the free expression of opinion and with the advocacy of orderly political change, however fundamental, there must be no interference, but towards passion and malevolence tending to incite crime and insurrection under guise of political evolution there should be no leniency. Legislation

to this end has been recommended by the Attorney General and should be enacted. In this direct connection, I would call your attention to my recommendations on August 8th, pointing out legislative measures which would be effective in controlling and bringing down the present cost of living, which contributes so largely to this unrest. On only one of these recommendations has the Congress acted. If the Government's campaign is to be effective, it is necessary that the other steps suggested should be acted on at once.

I renew and strongly urge the necessity of the extension of the present Food Control Act as to the period of time in which it shall remain in operation. The Attorney General has submitted a bill providing for an extension of this Act for a period of six months. As it now stands it is limited in operation to the period of the war and becomes inoperative upon the formal proclamation of peace. It is imperative that it should be extended at once. The Department of Justice has built up extensive machinery for the purpose of enforcing its provisions; all of which must be abandoned upon the conclusion of peace unless the provisions of this Act are extended.

During this period the Congress will have an opportunity to make similar, permanent provisons and regulations with regard to all goods destined for interstate commerce and to exclude them from interstate shipment, if the requirements of the law are not complied with. Some such regulation is imperatively necessary. The abuses that have grown up in the manipulation of prices by the withholding of foodstuffs and other necessaries of life cannot otherwise be effectively prevented. There can be no doubt of either the necessity or the legitimacy of such measures.

As I pointed out in my last message, publicity can accomplish a great deal in this campaign. The aims of the Government must be clearly brought to

the attention of the consuming public, civic organizations and state officials, who are in a position to lend their assistance to our efforts. You have made available funds with which to carrry on this campaign, but there is no provision in the law authorizing their expenditure for the purpose of making the public fully informed about the efforts of the Government. Specific recommendation has been made by the Attorney General in this regard. I would strongly urge upon you its immediate adoption, as it constitutes one of the preliminary steps to this campaign.

I also renew my recommendation that the Congress pass a law regulating cold storage as it is regulated, for example, by the laws of the State of New Jersey, which limit the time during which goods may be kept in storage, prescribe the method of disposing of them if kept beyond the permitted period, and require that goods released from storage shall in all cases bear the date of their receipt. It would materially add to the serviceability of the law, for the purpose we now have in view, if it were also prescribed that all goods released from storage for interstate shipment should have plainly marked upon each package the selling or market price at which they went into storage. By this means the purchaser would always be able to learn what profits stood between him and the producer or the wholesale dealer.

I would also renew my recommendation that all goods destined for interstate commerce should in every case, where their form or package makes it possible, be plainly marked with the price at which they left the hands of the producer.

We should formulate a law requiring a federal license of all corporations engaged in interstate commerce and embodying in the license, or in the conditions under which it is to be issued, specific regulations designed to secure competitive selling and prevent

unconscionable profits in the method of marketing. Such a law would afford a welcome opportunity to effect other much needed reforms in the business of interstate shipment and in the methods of corporations which are engaged in it; but for the moment I confine my recommendations to the object immediately in hand, which is to lower the cost of living.

No one who has observed the march of events in the last year can fail to note the absolute need of a definite programme to bring about an improvement in the conditions of labor. There can be no settled conditions leading to increased production and a reduction in the cost of living if labor and capital are to be antagonists instead of partners. Sound thinking and an honest desire to serve the interests of the whole nation, as distinguished from the interests of a class, must be applied to the solution of this great and pressing problem. The failure of other nations to consider this matter in a vigorous way has produced bitterness and jealousies and antagonisms, the food of radicalism. The only way to keep men from agitating against grievances is to remove the grievances. An unwillingness even to discuss these matters produces only dissatisfaction and gives comfort to the extreme elements in our country which endeavor to stir up disturbances in order to provoke governments to embark upon a course of retaliation and repression. The seed of revolution is repression. The remedy for these things must not be negative in character. It must be constructive. It must comprehend the general interest. The real antidote for the unrest which manifests itself is not suppression, but a deep consideration of the wrongs that beset our national life and the application of a remedy.

Congress has already shown its willingness to deal with these industrial wrongs by establishing the eight-hour day as the standard in every field of labor. It

has sought to find a way to prevent child labor. It has served the whole country by leading the way in developing the means of preserving and safeguarding lives and health in dangerous industries. It must now help in the difficult task of finding a method that will bring about a genuine democratization of industry, based upon the full recognition of the right of those who work, in whatever rank, to participate in some organic way in every decision which directly affects their welfare. It is with this purpose in mind that I called a conference to meet in Washington on December 1st, to consider these problems in all their broad aspects, with the idea of bringing about a better understanding between these two interests.

The great unrest throughout the world, out of which has emerged a demand for an immediate consideration of the difficulties between capital and labor, bids us put our own house in order. Frankly, there can be no permanent and lasting settlements between capital and labor which do not recognize the fundamental concepts for which labor has been struggling through the years. The whole world gave its recognition and endorsement to these fundamental purposes in the League of Nations. The statesmen gathered at Versailles recognized the fact that world stability could not be had by reverting to industrial standards and conditions against which the average workman of the world had revolted. It is, therefore, the task of the statesmen of this new day of change and readjustment to recognize world conditions and to seek to bring about, through legislation, conditions that will mean the ending of age-long antagonisms between capital and labor and that will hopefully lead to the buiding up of a comradeship which will result not only in greater contentment among the mass of workmen but also bring about a greater production and a greater prosperity to business itself.

To analyze the particulars in the demands of labor is to admit the justice of their complaint in many matters that lie at their basis. The workman demands an adequate wage, sufficient to permit him to live in comfort, unhampered by the fear of poverty and want in his old age. He demands the right to live and the right to work amidst sanitary surroundings, both in home and in workshop, surroundings that develop and do not retard his own health and well-being; and the right to provide for his children's wants in the matter of health and education. In other words, it is his desire to make the conditions of his life and the lives of those dear to him tolerable and easy to bear.

The establishment of the principles regarding labor laid down in the covenant of the League of Nations offers us the way to industrial peace and conciliation. No other road lies open to us. Not to pursue this one is longer to invite enmities, bitterness, and antagonisms which in the end only lead to industrial and social disaster. The unwilling workman is not a profitable servant. An employee whose industrial life is hedged about by hard and unjust conditions, which he did not create and over which he has no control, lacks that fine spirit of enthusiasm and volunteer effort which are the necessary ingredients of a great producing entity. Let us be frank about this solemn matter. The evidences of world-wide unrest which manifest themselves in violence throughout the world bid us pause and consider the means to be found to stop the spread of this contagious thing before it saps the very vitality of the nation itself. Do we gain strength by withholding the remedy? Or is it not the business of statesmen to treat these manifestations of unrest which meet us on every hand as evidences of an economic disorder and to apply constructive remedies wherever necessary, being sure that in the appli-

cation of the remedy we touch not the vital tissues of our industrial and economic life? There can be no recession of the tide of unrest until constructive instrumentalities are set up to stem that tide.

Governments must recognize the right of men collectively to bargain for humane objects that have at their base the mutual protection and welfare of those engaged in all industries. Labor must not be longer treated as a commodity. It must be regarded as the activity of human beings, posessed of deep yearnings and desires. The business man gives his best thought to the repair and replenishment of his machinery, so that its usefulness will not be impaired and its power to produce may always be at its height and kept in full vigor and motion. No less regard ought to be paid to the human machine, which after all propels the machinery of the world and is the great dynamic force that lies back of all industry and progress. Return to the old standards of wage and industry in employment are unthinkable. The terrible tragedy of war which has just ended and which has brought the world to the verge of chaos and disaster would be in vain if there should ensue a return to the conditions of the past. Europe itself, whence has come the unrest which now holds the world at bay, is an example of standpatism in these vital human matters which America might well accept as an example, not to be followed but studiously to be avoided. Europe made labor the differential, and the price of it all is enmity and antagonism and prostrated industry. The right of labor to live in peace and comfort must be recognized by governments and America should be the first to lay the foundation stones upon which industrial peace shall be built.

Labor not only is entitled to an adequate wage, but capital should receive a reasonable return upon its investment and is entitled to protection at the hands of the government in every emergency. No govern-

ment worthy of the name can "play" these elements against each other, for there is a mutuality of interest between them which the government must seek to express and to safeguard at all cost.

The right of individuals to strike is inviolate and ought not to be interfered with by any process of government, but there is a predominant right and that is the right of the government to protect all of its people and to assert its power and majesty against the challenge of any class. The government, when it asserts that right, seeks not to antagonize a class but simply to defend the right of the whole people as against the irreparable harm and injury that might be done by the attempt by any class to usurp a power that only government itself has a right to exercise as a protection to all.

In the matter of international disputes which have led to war, statesmen have sought to set up as a remedy arbitration for war. Does this not point the way for the settlement of industrial disputes, by the establishment of a tribunal, fair and just alike to all, which will settle industrial disputes which in the past have led to war and disaster? America, witnessing the evil consequences which have followed out of such disputes between these contending forces, must not admit itself impotent to deal with these matters by means of peaceful processes. Surely, there must be some method of bringing together in a council of peace and amity these two great interests, out of which will come a happier day of peace and cooperation, a day that will make men more hopeful and enthusiastic in their various tasks, that will make for more comfort and happiness in living and a more tolerable condition among all classes of men. Certainly human intelligence can devise some acceptable tribunal for adjusting the differences between capital and labor.

This is the hour of test and trial for America.

By her prowess and strength, and the indomitable courage of her soldiers, she demonstrated her power to vindicate on foreign battlefields her conceptions of liberty and justice. Let not her influence as a mediator between capital and labor be weakened and her own failure to settle matters of purely domestic concern be proclaimed to the world. There are those in this country who threaten direct action to force their will upon a majority. Russia today, with its blood and terror, is a painful object lesson of the power of minorities. It makes little difference what minority it is; whether capital or labor, or any other class; no sort of privilege will ever be permitted to dominate this country. We are a partnership or nothing that is worth while. We are a democracy, where the majority are the masters, or all the hopes and purposes of the men who founded this government have been defeated and forgotten. In America there is but one way by which great reforms can be accomplished and the relief sought by classes obtained and that is through the orderly processes of representative government. Those who would propose any other method of reform are enemies of this country. America will not be daunted by threats nor lose her composure or calmness in these distressing times. We can afford, in the midst of this day of passion and unrest, to be self-contained and sure. The instrument of all reform in America is the ballot. The road to economic and social reform in America is the straight road of justice to all classes and conditions of men. Men have but to follow this road to realize the full fruition of their objects and purposes. Let those beware who would take the shorter road of disorder and revolution. The right road is the road of justice and orderly process.

WOODROW WILSON.

THE WHITE HOUSE,
2 December, 1919.

DEFENDANT'S EXHIBIT No. 166.

COPY

THE UNITED STATES FINISHING COMPANY
320 BROADWAY

New York, N. Y.
March 6th, 1916

(Copy of memo to be handed to
the President after interview—A. C. I.)
My dear Mr. President:

I attach a brief statement of the dyestuff situation which the Hill Bill (H. R. 702) is expected to meet. This statement may be useful to you as a memorandum of our talk on March 8th.

I thank you very cordially for the opportunity to present the facts.

Yours faithfully,
(Sgd.) ANDREW C. IMBRIE.

The President
Washington

DEFENDANT'S EXHIBIT No. 166-A.

STATEMENT REFERRED TO IN DEFENDANT'S EXHIBIT No. 166.

Dyestuffs are necessary to make salable many of our manufactures. Germany has provided 90% of all the dyestuffs used in America. Since March 1915 no color has been received from Germany. Their color factories are making high explosives, not colors. Finished color is as scarce there as it is here. We are face to face with a color famine.

The hopefulness expressed in the reports of the Department of Commerce is not justified by the facts.

Remnants of German dyes in the hands of speculators, would not readily command prices ten to fifty times their normal value, if American makers of dyes were able to supply anything approximating the quantity of color officially estimated to be manufactured here.

The intensity and duration of this famine we can modify even if we cannot prevent it. The consensus of opinion of those best qualified to know is that the Hill Bill (H. R. 702) if enacted, will enable us to develop an adequate dyestuff industry of our own. The users of dyes, satisfied that this bill will impose no more burden than is absolutely necessary to establish in America a dyestuff industry sufficient to take care of their needs. They regard the slight additional expense as "insurance" against a repetition of the present crisis.

The imports for 1913 of aniline dyes were 44,000,000 pounds (value about $13,000,000). If Bill H. R. 702 is enacted, the new rates would mean approximately a 40% increase over the present existing rates. If the American manufacturers got the full benefit of the added duty the increased annual cost to the consumer would be about $5,000,000.

But the total yearly value of the woolen, silk, cotton, leather (tanned or dyed only) and hosiery industries is nearly *two billion dollars*, of which it is estimated that 85% is dyed, or over a billion and a half dollars of business annually.

The $5,000,000 added by Bill H. R. 702 would not make more than 1/10 of 1 cent per yard on all the yards manufactured in these great industries with a combined yearly value of $1,860,000,000. Even if we should figure it as ½ of 1 cent per yard, such an insignificant increase per yard would never reach the consuming public, much less be felt by them. Yet the lack of this $5,000,000 increase of duties will prevent the proper establishment of the Aniline Dye Indus-

try in the United States, the lack of which may paralyze industries that produce $1,500,000,000 of dyed fabrics a year and throw out of employment, directly and indirectly, millions of workers.

The testimony given at the hearing before the Ways and Means Committee January 14th and 15th, 1916, made it clear that American capital will be instantly available to meet this situation if prompt action is taken by Congress.

A dyestuff industry, necessary to our industrial independence, will also give us the chemists, plants and materials adaptable at short notice to the manufacture of high explosives.

DEFENDANT'S EXHIBIT No. 166-B.

COPY

From Congressional Record
of February 23, 1916

WAR DEPARTMENT
Washington, Feb. 16th, 1916

Hon. E. J. Hill,
House of Representatives
My dear Mr. Hill:—

(1) In reply to your letter of Feb. 9th, 1916, addressed to the Hon. Lindley M. Garrison, Secretary of War, and requesting the opinion of the War Department of the value to the United States Government of plants producing dye-stuffs in time of peace and capable of producing explosives in time of war, I may state that such plants would be of unquestionable value to any government, and that their maintenance in time of peace, with the complete equipment would enable their output to be changed from dyestuffs to explosives in a week's time, as claimed by

Dr. Schoellkopf, would remove to a great extent the necessity for the erection and maintenance of special large plants for explosives for war purposes.

(2) The War Department is not sufficiently familiar with the dystuff industry to form an opinion as to the terms under which a private manufacturer of dyestuffs would be willing to equip and maintain his plant as outlined above. It is understood, however, that many of these plants have all the apparatus necessary for the manufacture of explosives. In addition, their existence in time of peace would create a demand for practically all the raw materials required for the manufacture of the standard explosives, thereby insuring greater supplies of raw materials in time of war.

(3) The War Department has appreciated the value of private plants producing, or capable of producing, war munitions, or the essential materials therefor, and is of the opinion that the coordination of these plants with the government in such manner as to insure without waiting for special legislation after development of the necessity, would be advantageous.

Very respectfully,

H. L. SCOTT,
Secretary of War ad Interim.

DEFENDANT'S EXHIBIT No. 167.

EXTRACTS FROM STATEMENT OF COL. THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN, HEARINGS BEFORE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HOUSE OF REPRESENTATIVES, ON H. R. 13496.

MR. MILLER. And at this point, gentlemen, I want to call your attention to the fact that the alien prop-

erty I am talking about does not include 126 ships seized by the United States Shipping Board, or by the Navy Department, that were of German or Austrian origin. I do not know whether you want a list of those ships put into the hearing at this point, but I brought that along with me, because when you are considering the lump sum of all the property of any character held by this Government, taken from the enemy governments, I venture the personal opinion that we should take some cognizance of those 126 ships which are now held by your Government to-day, and which we all must admit, while not under the alien property act, were seized and are in the hands of this Government, which we should consider when we are considering the total amount of property holdings.

Now, if you want me to, I will put it in the hearings at this point. If you do not want it, I will merely refer to it.

The CHAIRMAN. Without objection, it may go in.

(The list of ships referred to is as follows:)

STATUS OF SEIZED ENEMY VESSELS AS OF NOVEMBER 15, 1922.

Name.	Former name.	Gross tonnage.	Type.	When built.	Former owner.	Disposition.
Actaeon	Adamsturm	5,000	Cargo	1909	The Hansa Line	Lost Nov. 24, 1917.
Agamemnon	Kaiser Wilhelm II	19,361	Cargo and passenger	1902	North German Lloyd	Control of U. S. Shipping Board.
America	Amerika	21,144	do	1905	Hamburg-American Line	Do.
Amphion	Koln	7,409	do	1899	North German Lloyd	Do.
Andalusia	Andalusia	5,509	Cargo	1896	Hamburg-American Line	Do.
Arapahoe	Steinbeck	2,163	Steel ship	1892	Knohr & Burchard	Sold Feb. 28, 1922.
Arcadia	Arcadia	5,454	Cargo	1896	Hamburg-American Line	Sold Aug. 22, 1922.
Armenia	Armenia	5,463	do	1896	do	Control of U. S. Shipping Board.
Artemis	Bohemia	8,413	do	1902	do	Do.
Ascutney	Pisa	4,966	do	1896	do	Do.
*Astoria	Frieda Leonhardt	2,822	do	1902	Leonhardt & Blumberg	Control of Navy.
Bath	Andromeda	2,554	Navy transport	1913	Argos Steamship Co	Do.
Beaufort	Rudolf Blumberg	1,769	do	1909	Leonhardt & Blumberg	Do.
Black Arrow	Black Hawk ex Rhaetia	5,022	Cargo and passenger	1904	Hamburg-American Line	Control of U. S. Shipping Board.
Bridgeport	Breslau	7,524	Navy transport	1901	North German Line	Control of Navy.
Camden	Kiel	4,494	do	1900	German Australian Line	Do.
Casco	Elmshorn	4,594	Cargo	1910	do	Sold Aug. 22, 1922.
Chattahoochie	Sachsen	8,027	do	1911	Hamburg-American Line	Lost Mar. 23, 1918.
Chillicothe	Arnoldus Vinnen	1,862	Steel ship	1892	F. A. Vinnen & Co	Sold May 13, 1920.
City of Honolulu	Huron, ex Friedrich der Grosse	10,688	Cargo and passenger	1896	North German Lloyd	Lost Oct. 17, 1922.
City of Los Angeles	Aeolus, ex Grosser Kurfurst	12,642	do	1899	do	Control of U. S. Shipping Board.
Coca	Arni	296	Scow			Sold Jan. 19, 1920.
Commercial Pathfinder	Osage, ex Seraphis	4,789	Cargo	1906	Deutsche Dampfahrts-Kosmos	Sold Feb. 14, 1920.
Commercial Scout	Gullport, ex Locksun	1,682	do	1902	North German Lloyd	Sold July 25, 1922, by Navy.
Commercial Trader	Honolulu, ex Itasco, ex Setos	4,740	do	1905	Deutsche Dampfahrts-Kosmos	Sold Jan. 26, 1920.
Coos	Loongmoon	1,969	do	1896	Hamburg-American Line	Control of U. S. Shipping Board.
Covington	Cincinnati	16,339	Cargo and passenger	1908	do	Lost July 1, 1918.
Cuba	Sachem, ex Coblenz	3,168	Cargo	1897	North German Lloyd	Sold Feb. 19, 1920.
Freedom	Iroquois, ex Wittekind	5,640	Cargo and passenger	1894	do	Control of U. S. Shipping Board.
General G. W. Goethals	Grunewald	4,418	do	1911	Hamburg-American Line	Sold Jan. 20, 1920.
General H. F. Hodges	Savoia	2,732	do	1889	do	Do.
General O. H. Ernst	Sachsenwald	3,564	do	1904	do	Do.
General W. C. Gorgas	Prins Sigismund	4,636	do	1902	do	Do.
*Atlas	Atlas	206	Wood auxiliary	1911	Jaluit Co	Returned to American owner after title had been established.
George Washington	George Washington	23,788	Cargo and passenger	1908	North German Lloyd	Control of U. S. Shipping Board.
Hermes	Hermes	149	Auxiliary wood schooner.			Control of Navy.
Houston	Liebenfels	4,525	Cargo and passenger	1903	The Hansa Line	Do.
Iosco	Johanne	1,531	Cargo	1903	M. Jobeen	Sold May 10, 1920.
Isonomia	Nassovia	3,902	do	1901	Hamburg-American Line	Sold Sept. 11, 1922.
Jamaica	Tacony ex Staatssekretar Kraetke ex Verdum.	2,009	do	1905	do	Sold Dec. 24, 1919.
Kermit	Appelea ex Elsass	6,646	do	1912	North German Lloyd	Sold Mar. 6, 1920.

Defendant's Exhibit No. 167

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Kittery	President	1,849	....do	1905	Hamburg-American Line	Control of Navy.
Leviathan	Vaterland	54,282	Cargo and passenger	1914	....do	Control of U. S. Shipping Board.
Long Beach	Hohenfelde	3,128	....do	1892	Fuhrmann, Nissle & Gunther	Sold by Navy May 24, 1922.
Madawaska	Koenig Wilhelm II	9,410	....do	1907	Hamburg-American Line	Control of Navy.
Martha Washington	Martha Washington	7,412	....do	1908	Unione Austriaca di Nav	Control of U. S. Shipping Board.
Mercury	Barbarossa	10,984	....do	1896	North German Lloyd	Do.
Midget	Wiegand	499	Cargo	1902	Deutsche Sudseephesphat	Do.
Monongahela	Red Jacket ex Dalbek	2,782	Steel bark	1892	Knohr & Burchard	Sold June 23, 1920.
Montank	Matador	1,468	Wood bark	1884	Carl J. Klingenberg & Co	Lost Aug. 4, 1920.
Monticello	O. U. D. Ahlers	7,533	Cargo	1911	The Hansa Line	Sold May 8, 1920.
Montpelier	Bochum	4,711	....do	1912	German Australian Line	Sold June 17, 1920.
Moshulu	Dresdnaught ex Kurt	3,116	Steel bark	1904	G. J. H. Siemers & Co	Sold May 13, 1920.
Mount Clay	DeKalb ex Prinz Eitel Friedrich	8,170	Cargo and passenger	1904	North German Lloyd	Sold July 13, 1920.
Mount Vernon	Kronprinzessin Cecillie	18,372	....do	1906	....do	Control of U. S. Shipping Board.
Muscoota	Flying Cloud ex Ottawa	2,660	Steel bark	1888	Rhederei Akt. Ges	Sold July 10, 1920.
Nanesmond	Pennsylvania	13,332	Cargo and passenger	1896	Hamburg-American Line	Control of U. S. Shipping Board
Neuse	Magdeburg	4,496	Cargo	1900	German-Australian Line	Do.
Newport News	Odenwald	3,537	Cargo and passenger	1904	Hamburg-American Line	Control of Navy.
Nipsic	Borneo	2,168	Cargo	1902	North German Lloyd	Sold July 16, 1920.
Nyanza	Esslingen	4,762	....do	1911	German-Australian Line	Sold May 25, 1920.
Oconee	Mais	2,555	....do	1906	Holm & Molzin	Sold Apr. 28, 1920; sunk.
Orion	Prins Oskar	6,026	....do	1902	Hamburg-American Line	Control of U. S. Shipping Board.
Otsego	Prins Eitel Friedrich	4,638	....do	1901	....do	Do.
Owasco	Allemannia	4,630	....do	1893	....do	Lost Dec. 10, 1917.
Paul Luckenbach	Poonam ex Suwanee ex Mark	6,699	....do	1913	North German Lloyd	Sold Feb. 27, 1920.
Pawnee	Harburg	4,472	....do	1899	German-Australian Line	Sold Aug. 29, 1922.
Pensacola	Nicaria	3,974	Cargo and passenger	1901	Hamburg-American Line	Control of Navy.
Pequot	Ockenfels	5,621	Cargo	1910	The Hansa Line	Sold Aug. 22, 1922.
Philippines	Bulgaria, ex Hercules	11,440	....do	1898	Hamburg-American Line	Control of U. S. Shipping Board.
Pisa	Aros	474	Scow			Sold Jan. 19, 1920.
Pocahontas	Prinzess Irene	10,893	Cargo and passenger	1900	North German Lloyd	Sold Aug. 5, 1922.
Pollux		86	Tug	1893		Sold Mar. 3, 1920.
Porto Rico	Moccasin, ex Prinz Joachim	4,301	Cargo and passenger	1903	Hamburg-American Line	Sold July 15, 1922.
Potomac	Antigone, ex-Neckar	9,709	....do	1900	North German Lloyd	Control of U. S. Shipping Board.
President Arthur	Princess Matoika, ex-Princess Alice.	10,421	....do	1900	....do	Do.
President Fillmore, ex-Hudson.	New Rochelle, ex-Powhatan, ex-Hamburg.	9,699	....do	1899	Hamburg-American Line	Do.
President Grant	President Grant	18,072	....do	1907	....do	Do.
President Lincoln	President Lincoln	18,168	....do	1907	....do	Lost May 31, 1918.
Quantico	Lyeemoon	1,925	Cargo	1890	....do	Lost Dec. 25, 1918.
Quincy	Vogesen	3,716	Cargo and passenger	1909	H. Vogemann	Control of Navy.
Quinnebaug	Pongtong	1,631	Cargo	1903	North German Lloyd	Sold Apr. 1, 1922.
Rajah	Rajah	2,264	....do	1902	....do	Sold Feb. 1, 1922.
Rappahannock	Pommern	6,478	....do	1913	....do	Control of Navy.
Raritan	Carl Diederichsen	1,243	....do	1901	M. Jebsen	Sold June 7, 1920.
Ramos	Staatssekretar Solf	304	Wood	1913	D. H. & P. Sudseeinseln	Sold by Navy Nov. 23, 1920.
Savannah	Saxonia	4,424	Cargo and passenger	1899	Hamburg-American Line	Control of Navy.
Susquehanna	Rhein	9,959	....do	1899	North German Lloyd	Control of U. S. Shipping Board.
Tague	Ex-Neptun, ex-Minnow	197	Wood auxiliary	1909	Jaluit Co. (title passed April, 1917, to purchasers).	
Tawah	Argus	486	Barge			Sold Jan. 19, 1920.
Tennessee	Camilla Rickmers	5,130	Cargo	1914	Rickmers Reismuhlin Rhed Co	Lost Sept. 30, 1918.

Status of Seized Enemy Vessels as of November 13, 1922—Continued.

Name.	Former name.	Gross tonnage.	Type.	When built.	Former owner.	Disposition.
Tippecanoe	Holsatia	5,644	Cargo	1914	Hamburg-American Line	Lost July 25, 1918.
Tonawanda	Indra	1,745	Steel ship	1892	Wachsmuth & Krogmann	Sold Mar. 11, 1922.
Tunica	Sambia	4,765	Cargo	1899	Hamburg-American Line	Sold Sept. 7, 1922.
Von Steuben	Kronprinz Wilhelm	14,908	Cargo and passenger	1901	North German Lloyd	Control of U. S. Shipping Board.
Wabash	Seneca, ex-Tubingen	5,672	Cargo	1900	do	Sold Dec. 6, 1918.
Wachusett	Suevia	4,336	do	1896	Hamburg-American Line	Control of U. S. Shipping Board.
Wamsutta	Darvel	1,508	do	1905	North German Lloyd	Lost Oct. 6, 1917.
Watauga	Gouverneur Jaeschke	1,668	do	1900	Hamburg-American Line	Sold Jan. 17, 1920.
Wyandotte	Willehad	4,761	do	1894	North German Lloyd	Control of U. S. Shipping Board.
Yadkin	Clara Mennig	1,685	do	1908	Damp. Ges. Clara Mennig	Sold Jan. 24, 1920.
Yazoo	Marudu	1,514	do	1905	North German Lloyd	Sold May 28, 1920.
Yucatan	Wacouta, ex-Prinz Waldemar	3,135	do	1903	do	Sold Jan. 5, 1920.
Yucca	Portonia	2,777	do	1903	Damp. Reed Horn Akt. Ges	Control of U. S. Shipping Board.
Yuma	Tsintau	1,766	do	1900	North German Lloyd	Sold Apr. 14, 1920.

Additional list of seized ships commissioned in the United States Navy and not included in special report No. 524, dated November 21, 1922, of the United States Shipping Board.

Name.	Former Name.	Commissioned in Navy between following dates.	Operated for—	Kind of service.
GERMAN.				
Aeolus	Grosser Kurfurst.	Aug. 4, 1917–Sept. 22, 1919.	Army account	Troop transport.
Antigone	Neckser	Sept. 5, 1917–Sept. 24, 1919.	do	Do.
Cap Finisterre	Cap Finisterre	Apr. 11, 1919–Nov. 25, 1919.	Army account, Apr. 11, 1919–Oct. 22, 1919; Shipping Board account, Oct. 22, 1919–Nov. 25, 1919.	Do.
De Kalb	Prins Eitel Frederich.	May 12, 1917–Sept. 23, 1919.	Army account	Do.
Graf Waldersee	Graf Waldersee.	Mar. 28, 1919–Nov. 26, 1919.	Army account, Mar. 28, 1919–Nov. 3, 1919; Shipping Board account, Nov. 3, 1919–Nov. 26, 1919.	Do.
Huron	Frederich der Grosse.	July 25, 1917–Sept. 2, 1919.	Army account	Do.
Imperator	Imperator	May 5, 1919–Nov. 24, 1919.	Army account, May 5, 1919–Oct. 15, 1919; Shipping Board account, Oct. 15, 1919–Nov. 24, 1919.	Do.
Kaiserin Auguste Victoria.	Kaiserin Auguste Victoria.	Mar. 27, 1919–Dec. 23, 1919.	Army account	Do.
Mobile	Mobile	Mar. 26, 1919–Nov. 25, 1919.	Army account, Mar. 26, 1919–Oct. 15, 1919; Shipping Board account, Oct. 15, 1919–Nov. 25, 1919.	Do.
Moccasin	Prins Joachim.	Feb. 26, 1918–June 2, 1919.	Army account	Animal transport.
Patricia	Patricia	Mar. 28, 1919–Sept. 18, 1919.	do	Troop transport.
Powhatan	Hamburg	Aug. 16, 1917–Sept. 2, 1919.	do	Do.
Pretoria	Pretoria	Mar. 29, 1919–Nov. 25, 1919.	Army account Mar. 29, 1919–Oct. 15, 1919; Shipping Board account, Oct. 15, 1919–Nov. 25, 1919.	Do.
Princess Matoika.	Prinzess Alice.	Apr. 27, 1918–Sept. 16, 1919.	Army account	Do.
Prinz Frederich Wilhelm.	Prinz Frederich Wilhelm.	Mar. 30, 1919–Nov. 25, 1919.	Army account Mar. 30, 1919–Oct. 15, 1919; Shipping Board account, Oct. 15, 1919–Nov. 25, 1919.	Do.
Suwanee	Mark	Apr. 11, 1919–Oct. 4, 1919.	Army account	Do.
Zeppelin	Zeppelin	Mar. 29, 1919–Nov. 25, 1919.	Army account Mar. 29, 1919–Oct. 15, 1919; Shipping Board account, Oct. 15, 1919–Nov. 25, 1919.	Do.
Artigas [1]	Wiegand	June 18, 1918–Jan. 4, 1919.	Shipping Board account	Cargo.
Gulfport [1]	Locksun	Oct. 1, 1917–Mar. 3, 1922.	Navy account	Do.
Schurz [2]	Geier	Sept. 15, 1917–June 21, 1918. [3]	Navy	
AUSTRIAN.				
Teresa	Teresa	Sept. 27, 1917–July 19, 1919.	Army account	Do.

[1] Operated in the naval overseas transportation service.
[2] Operated as gunboats.
[3] Sunk.

Mr. MILLER. Referring to the figures on November 29, 1922, we have approximately $347,000,000 of property on hand, representing all these various business trusts that I have outlined, stretching from the Philippine Islands to New England. But we must make certain deductions from that $347,000,000. We must deduct the unadjusted and uncomplied demands of property not actually reduced to possession, of over $4,000,000. We must deduct the interest received on cash deposited in the Treasury, or in Treasury investments, held in the Treasury Department, which these funds have earned, amounting to $24,000,000 and over, which leaves, in round figures, $318,000,000 remaining to be credited to the trust accounts. The amount required under this bill is approximately $44,000,000 which, if you return it, will leave a balance remaining of about $273,000,000.

I have a statement of that here, Mr. Chairman, which I can insert in the record, giving the exact figures, if it meets with your approval.

The CHAIRMAN. It may be inserted.

(The statement referred to is as follows:)

This bill will affect 30,368 trusts and $44,362,002.80 under the two classifications:

28,144 trusts less than $10,000	$22,122,002.80
2,224 trusts over $10,000	22,240,000.00
Total	44,362,002.80

STATUS OF PROPERTY ON TRUSTS LEDGERS AS OF NOVEMBER 30, 1922.

Amount as shown in statement	$347,310,776.22
Deduct unadjusted and uncomplied demands as property not actually reduced to possession	4,390,640.06
	342,920,136.16

Deduct interest received on cash deposited in Treasury or in Treasury investments (this may be considered in computing the total amount of alien property, but is not pro-rated among the 30,000 trusts)	$24,591,234.26
Total amount of property credited to trust accounts	318,328,901.90
Estimated amount required under Winslow bill	44,362,002.80
Balance remaining	273,966,899.10

Mr. MILLER. Now, gentlemen, if you pass this legislation it will leave in the hands of the Alien Property Custodian approximately $273,000,000. But bearing in mind the amount of money necessary when you were considering amendments to the trading with the enemy act in the previous Congress, and the amount afterwards drawn, I think I should call your attention to these facts here. The amendments to the trading with the enemy act, dated June 5, 1920, and January 26, 1921, I gather from the hearings which I read, at that time it was thought it would amount to $30,000,000 or $40,000,000—pardon me for juggling millions around in that way, but that is the way it stretches. In reality, it has resulted in withdrawing almost $125,000,000. So I am calling this detail to your attention, because the other departments of the Government who are interested in this legislation, and from whom you will undoubtedly hear, may ask the committee to consider very seriously what amount of property this is going to release, and whether it will impair the guarantee which we hold to such an extent as to make it approach a line where it would be unwise to return so much. I am here to tell the committee to-day, as a Government official who is charged

with the responsibility of administering this act, and who, therefore, must know many details about it, that in my opinion you can pass the provisions of this bill and do a just, and righteous and proper act, and still have enough money held by your Alien Property Office to guarantee the total of American claims that may finally be adjudicated. And I want to reiterate again that when we say guarantee we do not mean, that we are to eventually confiscate a dollar of this property to pay claims. I am speaking here as one—and my office is made up of a lot of them—who had the privilege of going to France and meeting these people at the front, and I am not leaning in any way backwards in favor of the citizens of countries who were at war with us.

I do think that some legislation of this character should be passed by the present Congress in order to alleviate the hardships of thousands of people whose paltry property is being held by us, and which in the end will undoubtedly be returned to them, especially the small ones. I am not going to take the time of the committee to-day, unless they want to bring it out in questions, to describe to you the letters that we receive and the pathetic appeals that come to us. And if you saw some of the property we are holding belonging to these former enemy subjects you would wonder why the Government ever wanted to hold it a day longer and why we are put to the expense of administering it; because the smaller the property is the more trouble it is to administer, and it is not good business.

Now, I have referred to the $10,000 return. That is included in the committee print which you hold before you, in the provisions, on page 6, shown there as (5-a), (5-b), and (6-a). Those few paragraphs there, in our opinion, will accomplish the $10,000 return. All the italics in this committee print is the

new legislation, and the bold type is the old legislation.

The CHAIRMAN. An interruption there.

Mr. MILLER. Certainly.

The CHAIRMAN. You will find in your books, members of the committee, two copies of this bill. One is the regular bill, and the other bill is italicized to show the new legislation which it is proposed to insert into section 9 of the trading with the enemy act. The italicized sections are not in the hands of any but members of the committee and perhaps Mr. Miller.

Mr. MILLER. If I may refer generally to some of the sections of this bill, and to certain provisions. On the bottom of page 3, the italicized language has been suggested as under the law at present, for this reason: The appropriations of Congress only cover the office force of the Alien Property Custodian in Washington. Under the provisions of the trading with the enemy act and all precedents in connection therewith, in comptroller's decisions, and Attorney General decisions, past and present, the Alien Property Custodian is authorized, in the administration of these trusts, to use the money in these trusts for administrative purposes. In other words, if we have a piece of real estate and the taxes are due and the real estate at the present time is not earning enough money to pay the taxes, or to pay for improvements that municipal authorities direct and authorize, we can, if the trust has any money in the treasury, use the money for that purpose. If a suit is brought against the United States and the Alien Property Custodian, under the present law the funds are automatically frozen tight. In the meantime, if any taxes come due, the Alien Property Custodian is absolutely prevented from getting any money to attend to that property, or to handle it, and in a number of cases some properties

have given us considerable thought and trouble and worry in order to handle the situation.

I have in mind a big proposition that was to be put up at auction, and probably knocked down for a song, because the funds were tied up in litigation. I had to do some hustling to get the money to take care of the property, as under the law of a guardian and common law trustee it was my duty to do, to protect the property. These are some of the reasons we have that provision in there.

On page 10 is another new provision, paragraph (dd). That refers to assignments. Since the armistice hundreds of Americans have come to us and asked us whether we would permit them to send some money over to their relatives or friends in Germany to see that they did not suffer from starvation and want, and that they will be protected in getting that money back out of the property of their relative or friend when it was returned to them. We have endeavored to tell them that if they want to go ahead and send money over to those friends we will endeavor to see that any assignment that is made from those people will be honored and recognized when this property is returned to them. That, broadly speaking, is the reason for (dd), and is to take care of those who provide for their friend.

Section 2, at the top of page 12, is self-explanatory. If refers to attorney's fees; attorneys for these claimants under this legislation, if it passes.

Section 3 on page 12 refers to those claimants, described briefly as follows: Any number of people came over from the former enemy countries to America and took out their naturalization papers, and were American citizens here and owned property. A number of them went back to their country for temporary sojourns, and when the great curtain of the European war fell on the Old World in 1914, if they happened

to be in Germany or any of the other enemy countries, they had no means whatever of getting out. They were caught in a great human trap. Many of them neglected to comply with the law which required a registration every two years with the American consul in order to retain their citizenship.

Some of them have told us there was no American consul where they were, and they did not know they were to go to the Spanish consul, who was the official representative of America during the time when no American consul was at that place. And this class of claims arouse more resentment and questions from you Members of Congress, than any other. The question is, Why are we still holding the property belonging to American citizens? That is the reason for this section, and it will enable the Alien Property office and the Department of Justice to clear up a number of claims that are now in the twilight zone when it comes to differentiating between American citizens, or an American citizen and his claim.

I will ask that I be allowed to insert in the record a detailed explanation of the various citizens of enemy countries, and citizens of other parts of the globe that are included in the property that has been taken over, as well as German, Austrian, and Hungarian property. I could read this list, but it is something you perhaps all know. It is something I would like to have in the hearings, and if I may be permitted, I will place it in the record.

The CHAIRMAN. It may be placed in the record. Just hand it to the reporter.

(The statement referred to is as follows:)

"NATIONALITIES FROM WHOM PROPERTY WAS SEIZED.

"(A) German property also includes (1) citizens of Alsace and Lorraine, formerly a portion of the German Empire; (2) citizens of Poland, formerly a

part of the German Empire; (3) citizens of Denmark residing in that portion of Schleswig Holstein formerly a portion of the German Empire.

"(B) Austria-Hungary also includes (1) citizens of the present Republic of Austria; (2) citizens of the present Republic of Hungary; (3) citizens of the Kingdom of the Serbs, Croats, and Slovenes residing in territory formerly a part of the Austria-Hungary Empire; (4) citizens of the Kingdom of Italy residing in the territory formerly a part of the Austria-Hungary Empire; (5) citizens of Poland in parts of Galicia and Silesia; (6) citizens of Czechoslovakia, practically all of whom resided in territory formerly a part of the Austria-Hungary Empire; (7) citizens of Rumania residing in territory formerly a part of the Austria-Hungary Empire.

"(C) Others include citizens of Turkey, Bulgaria, and those Russians living in occupied territory taken over by the Germans or Austria-Hungary and property of citizens whose citizenship or nationality was never determined.

"(D) Interned enemies includes those interned enemies who after their release from custody departed for their homes in Europe and did not remain here to take advantage of that provision of the trading with the enemy act which provides for the return of property when upon their release they continued to reside in the United States.

"(E) America includes the property reported as that of American citizens residing in enemy territory or in territory occupied by the enemy who are eligible as claimants upon proof of citizenship but whose property at that time had not been returned to them.

"Figures showing division of the property among the various nationals is difficult for accurate determination because the decision rests principally on a

matter of residence, and until a claim is filed for the return of property it is impossible to determine the nationality of the enemy in whose name the property is held."

Mr. MILLER. Now, gentlemen, I thank you for your forbearance. I have endeavored in a few minutes, and briefly, to portray this act to you and give you an insight of how we are endeavoring to conduct the office and at the same time to show you why we are advocating the passage of the principles of this bill in this Congress if possible.

The CHAIRMAN. You have evidently, I think, overlooked subsection (g), on page 11. This provision, as you know and I know, has been put in the bill in consequence of the interest of some of the other departments of the Government, and perhaps, while you are on that subject now, you might state to the committee what the purpose of that provision is and what it means, although there will be a representative of the War Department, and perhaps some other departments, who may speak on that provision later. This is, I realize, a matter which pertains particularly to the interests of departments other than your own.

Mr. MILLER. I passed that over, Mr. Chairman, in my discussion here on this measure, because I was only discussing that portion of your bill that had been suggested by the Alien Property Office. Since you have asked me the question I will state that subsection (g), on page 11—may I ask the chairman, did he refer to the fact that other Government departments had suggested legislation of that character?

The CHAIRMAN. That section was put in at the behest of other Government departments.

Mr. MILLER. Yes.

The CHAIRMAN. And for the purpose of protecting them in respect of the matters which are set forth in that paragraph.

Mr. MILLER. There were thousands of patents, trade-marks, prints, labels, and copyrights seized by the Alien Property Custodian under the trading with the enemy act. A great number of them, as you know, were utilized by the War and Navy Departments during the war under a license or outright purchase. If the committee desires, I can obtain from my office and put into the record at this point the number of those patents and the sales prices, or the terms under which they were licensed.

The CHAIRMAN. You might withhold that for a moment.

Mr. MILLER. Very well.

The CHAIRMAN. I have an amendment which the chair had in mind to suggest to the committee in due time which would affect that paragraph to the extent of adding the words "or seized by him," in addition to the words "conveyed, transferred, assigned, or delivered to the Alien Property Custodian," making it read "conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him."

Mr. MILLER. That would be perfectly proper.

The CHAIRMAN. That would be following the language of the act and should be in that paragraph.

Mr. MILLER. Is it understood, Mr. Chairman, that the provisions of paragraph (g) on page 11 relates only to the $10,000 return?

The CHAIRMAN. I will ask the committee to consider as a further suggestion of amendment of that paragraph this statement:

Subsection (g) on page 11 is too broad. It provides that this section shall not apply to patents, trade-marks, etc., conveyed or delivered to the Alien Property Custodian. The effect of this would be to make the whole of section 9 of the trading with the enemy act inapplicable to such patents and trade-marks, and hence to deprive non-enemy claimants of

the right to make claims for patents and trade-marks held by the Custodian. The provision was only intended to apply to the new matters contained in the bill—that is, the provisions of subsections (5-a), (5-b), and (6-a) on page 6 of the bill, granting enemy aliens the right to have returned property not in excess of $10,000. The bill should be appropriately amended to cure this defect.

And that will be suggested as a second amendment to that paragraph, in addition to the words "or seized by him." Perhaps we can get information about that more directly from some other representatives of the Government, representing some other department, in due time.

MR. MILLER. Then you do not want me to dwell any longer on that?

The CHAIRMAN. Not particularly. Only I want to ask if you appreciate what that was driving at as affecting your holdings.

Mr. HAWES. Do I understand that Mr. Miller is to insert into the record a list of those patents, and their value?

Mr. MILLER. I can get from my office and insert in these hearings, Mr. Hawes, information relative to the patents, that the War Department and Navy Department took over. In Senate Document 181, in a report made by me last April, to the Senate, is a detailed description of every patent seized, and its disposition.

Mr. HAWES. I would be glad if you would put it in the record.

The CHAIRMAN. How large a record is that,

Mr. MILLER. Does the gentleman mean extracts from Senate Document 181, with reference to the War and Navy Department patents?

Mr. HAWES. I understood you to suggest that you had a list of those patents which you would insert,

and were interrupted by the chairman, and it seems to me decision was not reached whether it should be inserted, or not.

Mr. MILLER. I can put in the record at that point some useful information for the committee, with reference to these War and Navy Department patents, which the Alien Property Custodian had assigned to them. But I really think it would make a very voluminous record, and would duplicate printing. That document is available, and I can give you the pages where it is available in that document. It is a matter of whether you want to put it in or not.

Mr. HAWES. How many pages would it occupy?

The CHAIRMAN. Mr. Hawes, will you be satisfied with a reference to it at this point?

Mr. HAWES. Not entirely, Mr. Chairman. This whole evidence will be reviewed by Members of the House.

Mr. MILLER. Mr. Hawes, it consists of 82 pages in my report of April 10, 1922, Senate Document 181.

Mr. HAWES. That is too long. Could you not make some sort of digest, Mr. Miller?

Mr. MILLER. Yes, sir; I should be glad to do that, and will put it in here.

The CHAIRMAN. Put that in the record.

(The matter referred to was subsequently furnished by the witness, and is here printed in full, as follows:)

List of patents licensed or sold to the United States Government by the Alien Property Custodian, found on the following pages of Senate Document 181, Sixty-seventh Congress, dated April 20, 1922, being the report of the Alien Property Custodian, in response to Senate Resolution 191:

Pages 812 to 884, inclusive.

Pages 1007, 1031 to 1034, inclusive.

An abstract of all licenses and sales to the United States Government, covering patents which have been seized by the Alien Property Custodian, is herewith given:

Nonexclusive licenses.—Number of patents, 5,785; date of license, December 20, 1920; consideration, $100,000.

Sales.—Number of patents, 105; date of sale, February 6, 1919; consideration, $1,690.

The United States Government, represented by the Secretary of the Navy, reassigned three of these patents to the Alien Property Custodian, consideration being $105.

This sale now covers 102 patents, with a consideration of $1,585.

Number of patents, 12 sold, 72 licensed; date of sale and license, April 3, 1920; consideration, $2,000.

In addition thereto, abstracts from the records show that the Atlantic Communication Co., under date of February 5, 1919, assigned to the United States Government, as represented by the Secretary of the Navy, one contract dated February 21, 1913, including four patents and two applications.

The New York Patents Exploration Corporation assigned to the United States Government, as represented by the Secretary of the Navy, two patents, one of which does not appear to have been seized by the Alien Property Custodian.

In addition thereto, under date of February 26, 1921, the Chemical Foundation (Inc.), granted a nonexclusive license to the United States Government, as represented by the Secretary of the Navy, covering 160 patents, for the consideration of $1.

Mr. NEWTON. Mr. Miller, you were referring to, and have inserted in the record, the names of something like 120 ships that were seized, but of course

not seized under the trading with the enemy act. Under just what law were they seized by the Government?

Mr. MILLER. They were seized, Mr. Newton, under presidential proclamations between the time war was declared, April 6, 1917, and the time the trading with the enemy act was passed, October 8, 1917.

Mr. NEWTON. Anticipating action by Congress later in the trading with the enemy act?

Mr. MILLER. Yes. I am reminded that that matter was covered by a joint resolution of May 12, 1917.

Mr. NEWTON. Then just what is the status of those ships to-day? Do we account for them in any way, as we are now compelled to account for the property seized by the Alien Property Custodian?

Mr. MILLER. I am just giving you my personal opinion, Mr. Newton——

Mr. NEWTON. I just wanted to get the general idea.

Mr. MILLER. In my opinion I should suppose our former enemies would bring up the question of our having those ships when it came to settling up finally, because they represent millions of dollars worth of property. I merely called attention to the fact so that it may answer any inquiries made by other departments.

Mr. NEWTON. And that list includes the *Leviathan* and all those other very large ocean-going vessels?

Mr. MILLER. Yes, sir; every one of them.

Mr. NEWTON. You mentioned that there was a sufficient amount of property on hand to take care of the American claims, in your judgment, after the provisions of this proposed act had been complied with?

Mr. MILLER. Yes, sir.

Mr. NEWTON. In estimating that did you take into consideration the value of these ships, or is that outside of the question of the ships?

Mr. MILLER. That is outside of that, sir. But they will amount to such an enormous sum that I thought it was only just and proper to call the attention of the committee to it, even though I have nothing to do with it officially.

Mr. DENISON. Mr. Miller, you have mentioned the reasons which impelled you to recommend the return of these claims that are in value below $10,000. Just what reason do you give for the recommendation for the repayment of $10,000 on the claims which are above that amount in value?

Mr. MILLER. Why, Mr. Denison, it occurred to us that the holders of property of the value of $10,000 and over could probably attack the act on the ground that the Act of Congress was discriminatory if we did not also include them in some of the benefits of it. It is a very hard proposition to draw a deadline and say that you, with $9,990, should get your property and that the other man with $10,100, should get nothing.

Mr. DENISON. It was just to meet a legal objection?

Mr. MILLER. Yes; and I think it is only proper and just that the larger trusts should be permitted to participate up to that limit. You know $10,000 is a lot of money over on the other side of the water right now.

Mr. DENISON. You spoke of certain assignments of interest by parties in Germany. Those assignments were not absolute assignments, were they, but merely conditional assignments?

Mr. MILLER. Merely conditional, because under the law to-day, Mr. Denison, none of these people in theory have any right to receive anything or to assent or dissent to anything that we do.

Mr. DENISON. They are merely conditioned upon final determination of the legal rights of the parties?

Mr. MILLER. Yes, sir. It will not mean that a lot of people will buy up claims, because the administration of that provision rests with our office, under such rules and regulations as the President shall prescribe.

Mr. RAYBURN. Mr. Miller, many Members and other people have asked me why it is that we continue to hold all this foreign property when we are not at war with anybody? We have not been at war with anybody for four years. Why is not this thing wound up?

Mr. MILLER. Mr. Rayburn, all I can say to that is that it is a general question. It is absolutely up to the United States Government, represented by the legislative branch down here and the executive departments up at the other end of the Avenue.

Mr. RAYBURN. Absolutely, but you are here as an expert witness. You are the custodian of this property. Why do you put it at $10,000 instead of the limit?

Mr. MILLER. Because, as I said in my preliminary statement——

Mr. RAYBURN. This bill is your recommendation, as I understand it?

Mr. MILLER. Yes; the portions that I have referred to are my recommendations, worked out by Mr. Winslow.

Mr. RAYBURN. Yes. Well, why not all of it?

Mr. MILLER. That is absolutely, Mr. Rayburn, a matter of policy to be determined by Congress and higher authority. I would not attempt, as the custodian and administrator——

Mr. RAYBURN. Well, why didn't you say $25,000 instead of $10,000? Why didn't you say $100,000?

Mr. MILLER. Because, Mr. Rayburn, I understand that that would depreciate the fund to such an extent that other governmental departments that are inter-

ested in other phases of this question probably would not be favorably inclined to it.

Mr. RAYBURN. What other governmental department is interested in holding this property. What value is it to the United States to hold this property?

Mr. MILLER. Just to answer the first part of your question, the Department of State is charged with the negotiation of these American claims. The Mixed Claims Commission is directly under the Secretary of State.

Mr. RAYBURN. I understand, but this is a matter for the Government, is it not? It is not a matter that individuals are responsible for, is it?

Mr. MILLER. The whole subject matter of the question is a matter of determination of policy.

Mr. RAYBURN. Yes; and I want to get the objection to it, if there is any. You have recommended that this money be paid, to the amount of $10,000. I do not understand why it can not all be paid to them so that we can get out of this business.

The CHAIRMAN. I would suggest, Mr. Rayburn, that you let the witness answer the questions as you go along. You have piled up half a dozen of them.

Mr. RAYBURN. I have not been able to get the witness to give me an answer to any question yet.

The CHAIRMAN. Well he has not had time to do so. If you will ask him one question at a time——

Mr. RAYBURN. Well, I will do my own questioning in my own way.

The CHAIRMAN. You will have to give the witness a chance to answer.

Mr. MILLER. Mr. Rayburn, I am not appearing here from the standpoint of an objector to any policy that this Congress wants to enact into law with reference to this alien property; I am merely here to-day in a positive way to recommend something that I think will go through quickly so that we can at least begin

to make a preliminary step in the right direction. I have tried to show you that, both personally and officially—and I am not the only Government officer to be considered—that I do not favor the confiscation of private property to pay debts. I have endeavored to answer your question.

Mr. RAYBURN. Well, Mr. Miller, you have not answered me. I want your opinion as to why this property should not all be returned in the immediate future.

Mr. MILLER. My personal opinion is that the Government does not at this time favor the immediate return of all of it, because of the very provisions that your Congress put in the Knox-Porter peace resolution, to which I have referred. That contains the last official instructions that any of us have had from Congress—and Congress makes the laws—namely, that this shall be retained by the Government until such time as the former enemy governments shall respectively have made suitable provision for the satisfaction of all claims against these governments. That is the last instruction we have in any law on the subject.

Mr. LEA. Mr. Miller, suppose that Congress should now definitely determine that it will not take private property for the satisfaction of claims. Would you then know of any reason why Congress should any longer hold this property?

Mr. MILLER. No; if that policy is arrived at there would not be any further reason why we should.

Mr. LEA. Do you think the fact that you were holding this property would help in any way toward securing an early settlement of the claims of American citizens?

Mr. MILLER. I know unofficially, Mr. Lea, that the German Government authorities are intensely in-

terested in the settlement of these American claims against Germany, because they realize that until these things are cleared up the United States and Germany can not get back into their old stride of friendly commercial and economic relations, and it was largely as a step in the direction of reestablishing friendly commercial and economic relations that we thought out this $10,000 return proposition.

Mr. LEA. What has been done toward the satisfaction of the claims of American citizens for property held by the German alien property custodian?

Mr. MILLER. The German custodian operates a little differently than we do. They do not have to wait for laws to be passed by their Reichstag or legislative assembly; they can be released upon orders in council by the President, and they have returned a good part of the property they seized. But there is a class of property that they can not return, and that is American amounts figured in gold dollars that were taken over at the time the war started. The only way they can return that is in the depreciated value of the mark. That represents an important part of the claims that the mixed claims commission is considering. Do you catch the point?

Mr. LEA. Yes. Has any agreement been made between the United States and Germany as to what shall be considered the value of the mark in the settlement of these American claims?

Mr. MILLER. I was told informally the other night that they had not, but in my negotiations in the matter I have to make the best deal that I can. Court decisions are along the line that the value of the mark is as of the time the suit is filed, and if suits have been filed in the last year or so I am sure the value is well under 1 cent a mark. I have made settlements myself since I have been in office at the rate of 7 cents.

Mr. LEA. I have gathered from statements in the

newspapers that an agreement was made between the United States and Germany by which American citizens were to be paid the full value of the mark as of the day the United States entered the war. Do you know whether or not there is any such agreement?

Mr. MILLER. I was informed by an attorney of the mixed claims commission that they had either arrived at such a decision or were about to arrive at a decision which would settle the value of the mark at the average cable value 30 days preceding our entry into the war. That was 18 cents, as I understand it, Mr. Lea.

Mr. LEA. Do you know about the total value of the claims of American citizens for property in the hands of the German alien property custodian?

Mr. MILLER. I do not. This is merely a guess, Mr. Lea, but I understand that at no time did the German custodian have over $100,000,000 of property over there; and the Austria-Hungarian Government, as I am informed, never had an alien property custodian, and did not seize property belonging to American citizens.

Mr. LEA. I want to ask one question about those assignments that Mr. Denison inquired about a moment ago. At the present time do you recognize the legal right of one of these claimants to assign his claim against the Government?

Mr. MILLER. No, sir; we are not permitted to do that under the law, Mr. Lea. The only right that we give them now is when the question of a sale comes up. I have always endeavored to obtain their unofficial assent, and have so done in all sales that have been consummated. It is not binding, it is not mandatory, but I usually have their assent.

Mr. LEA. Referring to the provision on page 11, exempting property from attachment and execution, as I understand it, do you know whether or not any

right of American creditors against the German claims is involved under that section? Have you notice of any claims against this property that is in the hands of the custodian that would be affected by this exemption?

Mr. MILLER. No, sir. That is, as you say, the old law, and in my opinion it would not be affected.

Mr. HUDDLESTON. Mr. Miller, I understood you to say that you thought this matter should be dealt with according to a consistent policy of our Government. That is correct, isn't it?

Mr. MILLER. Yes, sir; generally speaking.

Mr. HUDDLESTON. Then I assume that this bill represents, as far as it goes, the present policy of our Government?

Mr. MILLER. I should say it represents the desire of the present administration, surrounded as they are by the provisions in the peace resolution.

Mr. HUDDLESTON. In other words, you are not pressing this bill merely upon your own responsibility, but it meets the approval of the present administration?

Mr. MILLER. You are correct, Mr. Huddleston.

Mr. HUDDLESTON. What part of this property remains in specie, or in the form in which it was when seized?

Mr. MILLER. I can best illustrate by stating that to-day in the Treasury there is a total of $174,000,000 invested in Liberty bonds or in cash. That represents either property that has been liquidated or cash seized or stocks, bonds, and securities that have been seized and then liquidated.

Mr. HUDDLESTON. What part of it is cash seized?

Mr. MILLER. I regret, sir, it is impossible for me to answer that in detail. It would take a detailed audit, Mr. Huddleston, for me to give you that. I do not know whether I catch your question, but to-day——

Mr. HUDDLESTON. What I want to know is, what

part of this property remains in the same form in which it was taken over? Of course, cash does not change its form.

Mr. MILLER. I should say, roughly speaking, only a half of it, because when I answer your question I have in mind a number of sales of industrial plants that were disposed of under my predecessor's tenure of office. To-day I am operating very few industrial plants.

Mr. HUDDLESTON. Would the cash credit to the Alien Property administration be sufficient, in your opinion, to discharge claims that might be properly made against the German Government.

Mr. MILLER. Oh, yes. As I have said informally before to-day, that amount of money, $174,000,000, would eventually guarantee all American claims. But that is my personal opinion.

Mr. HUDDLESTON. What would you think of returning all the property which may be held that remains in specie?

Mr. MILLER. That would be perfectly proper, sir; but there are a whole lot of people who would come in under the terms of this $10,000 return bill whose property is not represented in cash in the Treasury.

Mr. HUDDLESTON. But there is no expense connected with administering that property—the cash?

Mr. MILLER. No, sir.

Mr. HUDDLESTON. And the other is expensive; in some instances it is pretty evident that the expense of administering it will consume it, and in every case it depreciates?

Mr. MILLER. Let me say, Mr. Huddleston, that I do not see how you can pass discriminatory legislation, because if you say that the property that the Alien Property Custodian holds to-day intact in some form—stocks, bonds, real estate, and industrial plants

—shall go back, you still hold property that has been turned into cash.

Mr. HUDDLESTON. I was going to ask why you think Congress may not discriminate among the claimants?

Mr. MILLER. Oh, it is up to the Congress, sir, to pass any legislation that you want.

Mr. HUDDLESTON. Have you in mind any constitutional provision that would prevent Congress from returning all of it except for instance, a single specific item?

Mr. MILLER. No, sir; the Congress could pass legislation of that character if they wanted to, and I can not conceive that it would be unconstitutional.

Mr. HUDDLESTON. So that there is not any question of legality raised in a discrimination by Congress among the claimants?

Mr. MILLER. No, sir; merely I would submit, Mr. Huddleston, it is largely a matter of fairness.

Mr. HUDDLESTON. Of policy and fairness?

Mr. MILLER. Yes.

Mr. HUDDLESTON. I understood you to say, in reply to Mr. Denison, that there was some question of legality in it.

Mr. MILLER. It was more as a matter of fairness that the bill was drawn to include claims above $10,000; although I have been told—I have not had a chance to examine into it—that they might attack the law if the parties above $10,000 were barred.

Mr. HUDDLESTON. On what ground might they attack it

Mr. MILLER. Mr. Hudleston, I am not discussing this from a constitutional lawyer's point of view.

Mr. HUDDLESTON. Well, I had in mind that you probably had taken legal advice.

Mr. MILLER. I really am not prepared, nor am I equipped here to-day, to discuss the legal situation.

Mr. HUDDLESTON. The retention of this property in excess of the proposed $10,000 limit is in itself a discrimination, even if it were implied that it would at some future time be returned. But the implication in the retention is that we intend to do something with this property in the future; the implication is that we expect to confiscate it and apply it to the payment of claims, and I can not think of anything more discriminatory than to take the property of one man to discharge a claim against his Government and to release the property of another man.

Mr. MILLER. That may be the implication, Mr. Huddleston, in the laws which the Congress has heretofore passed, but I know it is not the desire nor the policy of this administration to resort to confiscation of this private property to pay American claims. It is merely held as a guaranty.

Mr. HUDDLESTON. Well, what is a guaranty worth if you do not intend to enforce it? If the administration has decided definitely upon a policy of not applying in any event this property to the payment of claims, it has no effect as a guaranty and has no effect of any kind. Are you able to advise us that that is the policy of the administration?

Mr. MILLER. Not to resort to confiscation?

Mr. HUDDLESTON. Yes.

Mr. MILLER. Yes; I am safe in making that statement here to-day.

Mr. HUDDLESTON. Then, if that is correct, there would seem to be no reason for not returning all the property?

Mr. MILLER. That is absolutely so; but as I told Mr. Rayburn, the last instruction we have from the Congress is in this peace resolution that I referred to.

Mr. HUDDLESTON. Well, we are now changing that, so if we have definitely decided not to use any of this property for that purpose of applying it to the pay-

ment of claims we had better get rid of it and get it back to the people who own it?

Mr. MILLER. I want to say, Mr. Huddleston, that I brought up this claim situation, because you can not discuss this alien property situation without it. If I had adopted the attitude of simply limiting my discussion to my own office, I would not have mentioned it. I want to say here that I do not want the Mixed Claims Commission or the Department of State to think that I am encroaching on their prerogatives. Any remarks that I have made on that are merely personal.

Mr. HUDDLESTON. You have used the expression that it was proper and "righteous," I think that was the word you used, to return this property of $10,000 and less. I did not misunderstand you in that?

Mr. MILLER. You did not.

Mr. HUDDLESTON. Well it is just as proper and righteous to return all the other property, is it not?

Mr. MILLER. In theory it is absolutely just as right and proper to return it, but unfortunately we are dealing here to-day with practical present-day matters and the legislation that I have referred to.

Mr. HUDDLESTON: I was wondering just what practical present-day matter it is that would prevent us from doing a thing which we have already decided that we are going to do.

Mr. MILLER. The most practical present-day situation—and I do not want to wear it threadbare—is that provision in the peace resolution which a number of you gentlemen voted on last year.

Mr. HUDDLESTON. Legislators as well as executives are timid and very fearful of public opinion. I am wondering whether there is any feeling of that kind that causes you to be hesitant about going full length with regard to this property, or a lack of courage on the part of Congress or the administration which leads us to deal with this matter in a way which

is not according to traditional American policy and then and are trying to collect a lot of claims. I have that thought in my mind, and I was anxious to have you explain anything to the contrary.

Mr. MILLER. It is my personal opinion, Mr. Huddleston, that the great majority of the American people and a great majority of their Representatives here in Congress favor a return of all this property right now. On the other hand, as long as you have brought the subject up, it is quite proper that an active minority are talking about the *Lusitania* and other claims, and they have the right to talk about it, because the peace resolution specifically recognizes that state of affairs.

Mr. HUDDLESTON. There is one more question I want to ask: You think it is proper to recognize transfers and assignments of this property and of claims for the property, and that such recognition be provided for in a section of this amendment?

Mr. MILLER. I think it is really necessary, Mr. Huddleston, for the proper administration of the act, when it comes to carrying out the provisions of this bill, if it is enacted into law.

Mr. HUDDLESTON. Do you think that transfers made to speculators or which have been made upon an unconscionable basis ought to be recognized?

Mr. MILLER. Absolutely not. I do not know whether I have said so here to-day, but you can rest assured that if we are called upon to administer those provisions we will establish rules and regulations that will absolutely prevent any of that. You can not draw any statute but what somebody will try to get around it; you have got to trust to the honesty of your Government officials to see that it is done right.

Mr. HUDDLESTON. You think we should not attempt, in writing the statute, to guard against claims

made by transferees who have taken advantage of the necessities of the true owners to acquire their rights upon extortionate terms?

Mr. MILLER. I would welcome any addition to that section (dd) that would stamp that policy more plainly on the legislation, because you and I are both aware of a lot of people that have overrun Europe since the armistice—they were not over there when there was any fighting, but have gone there since then and are trying to collect a lot of claims. I understand that if this goes through we are going to have the active and earnest cooperation of the legations and embassies here in seeing to it that no frauds of that kind are put over.

Mr. HUDDLESTON. With reference to the ships, are they held by the Shipping Board?

Mr. MILLER. One hundred and five of them are held by the Shipping Board, and are so noted on this memorandum; 21 of them are still held by the Navy, and are so noted on this memorandum that I have put in the record.

Mr. HUDDLESTON. What part of those ships, if any, are in the class of "lawful war prizes?"

Mr. MILLER. That is very difficult to say. Those ships that were seized at Hoboken were all German auxiliary cruisers, and as you know, were all used to transport our men to France. I do not think that any of these are prizes of war taken on the high seas.

Mr. HUDDLESTON. Have we none such?

Mr. MILLER. I do not think so, sir; I do not think that any of these vessels were captured on the high seas as prizes of war. They were at their docks in American ports all over the world.

Mr. HUDDLESTON. Would legislation be required in order to deal with that aspect of the situation?

Mr. MILLER. I only brought up the ship situation because I conceived that, from the German stand-

point, they would certainly remind us of these ships when it came to settle our final accounts on all these matters. They are certainly property taken from the enemy or subjects of the enemy, and might be in the same category as this alien property when we are considering all that property as a whole.

Mr. HUDDLESTON. You think they should be dealt with by Congress in any legislation?

Mr. MILLER. Well, I would not want to venture even a personal opinion there, Mr. Huddleston, because these ships were never in my possession; they are in the possession of the Navy Department and the Shipping Board. I certainly hope that the *Leviathan* —which represents more to the average American doughboy than any other ship on the water—stays under the American flag as long as it is afloat.

Mr. HUDDLESTON. Well, we are about to sell that ship now for less than it is costing us to recondition it, are we not?

Mr. MILLER. No; I understand the Shipping Board is conditioning that vessel, and the chairman told me a day or so ago that they expected to put it in the Southampton service, commencing this spring.

Mr. HUDDLESTON. Of course those ships were all taken over under this resolution that you referred to, of——

Mr. MILLER. May 12, 1917.

Mr. HUDDLESTON. And there was considerable discussion over the propriety of that act, in view of our treaty with Germany which was in effect at the time the war began.

Mr. MILLER. You mean the seizing of these ships?

Mr. HUDDLESTON. Yes. You have not heard that question raised?

Mr. MILLER. No, sir; I have not, Mr. Huddleston. I merely brought the ship situation up here to-day to endeavor to lay every possible card on the table in discussing this subject.

Mr. HAWES. Mr. Miller, I understand it is your official view that all of this property should be returned as quickly as possible?

Mr. MILLER. My official view?

Mr. HAWES. Yes.

Mr. MILLER. As I told Mr. Rayburn a while ago, Mr. Hawes, that is a determination of policy that is absolutely up to Congress and the President or the State Department. I am the administrative officer and custodian. Personally I have not hesitated to say here to-day that the sooner we are divorced from this alien-property business and it is cleaned up and out of the way the better it will be. Nobody will be better satisfied than I, but it will take longer than the time I can spare to do it.

Mr. HAWES. Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible?

Mr. MILLER. Yes, sir.

Mr. HAWES. And that you would pursue that policy excepting for the belief that some action of Congress is necessary to authorize you so to proceed?

Mr. MILLER. Yes, sir; and bearing in mind this American claims situation, which we can not ignore, Mr. Hawes, in our discussions, and should not ignore.

Mr. HAWES. I understand that we originally had or seized from Germany $600,000,000, in round numbers. That has gradually been reduced to approximately $347,000,000. Now, your bill proposes to return only $22,000,000 of claims amounting to less than $10,000, and approximately $22,000,000 coming out of the classification above the $10,000,000 limitation, making a total of about $44,000,000 to be returned?

Mr. MILLER. Yes, sir.

Mr. HAWES. And I understand, Mr. Miller, that you do not believe the United States Government should take the position that property seized by the

Alien Property Custodian from private individuals should be used by the American Government in the enforcement of its claims against Germany?

Mr. MILLER. I have stated here to-day a number of times that personally I would be opposed to the confiscation of private property to pay claims against an enemy government.

Mr. HAWES. Do you know of any instance in history, or any precedent, that would justify such a course by any government?

Mr. MILLER. Well the governments on the other side of the water have adopted a different policy, which is practically confiscation, although it was done with the consent of the German Government. They pooled all their property and liquidated it and paid their claims through a clearing house; so that if a German did not get his property back that was in England he has to look to the German Government to get it, and if a Britisher does not get back his property that was seized and liquidated in Germany he has got to look to his own Government for it. The trading with the enemy act is a peculiar piece of war-time legislation.

Mr. HAWES. The situation you have just described is a Government refunding agreement between England and Germany?

Mr. MILLER. Yes.

Mr. HAWES. And an entirely different situation from this. Do you know of any objection to returning all of this property, excepting some reasons of State which have not yet been brought to the attention of the committee, or for the reason of using it as a security for the collection of American claims against Germany?

Mr. MILLER. Those would be the only two reasons, sir, for holding it a day longer.

Mr. HAWES. I believe it was Robin Hood that

took from the rich and did not rob the poor, and I believe Jesse James, of my State, showed some discrimination in deciding whom he would rob——

Mr. NEWTON. He did not when he got up into my State.

Mr. SWEET. He didn't get out of your State.

Mr. HAWES. You didn't get Jesse up there; it was Younger that you got. But I want to understand how, either in equity or in justice, or upon what rule the United States can draw the distinction as to the value of the property. If a man owning 1 horse comes under a certain rule, does not a man owning 100 horses come under the same rule?

Mr. MILLER. Yes, sir.

Mr. HAWES. And should not a man that has $5 held by the Government come under the same rule as a man owning $5,000,000?

Mr. MILLER. That is not debatable, Mr. Hawes.

Mr. HAWES. There is no question about it. Have you discussed the legal right—the moral right and the equitable right of course can not be questioned by any man, and no distinction should be drawn as to the value of the property held, but have you looked into the legal right of the United States Government to draw such a distinction?

Mr. MILLER. Well, the legal right of the Government to do any of these things in connection with alien property is clearly because of the law that Congress passed. It is a piece of war-time legislation, and the minute that is repealed the legal obstacles are out of the way. There is a distinction, as I have said here to-day, in the theory of this discussion that we are indulging in and the practical situation to-day which we want to meet.

Mr. HAWES. In case this bill is passed it will release approximately $44,000,000 held under the deadline classification of the bill, which would leave in

your possession some $347,000,000 of property? Is that correct?

Mr. MILLER. That is the total amount to-day, Mr. Hawes. As I said before, if the provisions of this bill are carried out there will be approximately $273,000,000 left.

Mr. HAWES. If this bill is carried out?

Mr. MILLER. Yes, sir.

Mr. HAWES. In addition to that the United States Government has, as security for German debts, 126 ships. What would you say the approximate value of those ships is now?

MR. MILLER: I can not answer that question, because I have been unable to get such an answer from the Government departments that hold those ships. I wanted to have it for you here today, anticipating just such a question, but I was not able to get it.

MR. HAWES. It would reasonably exceed $300,000,000?

MR. MILLER. I should say it would reasonably be $300,000,000. As to whether you could go out and get that on the market today is debatable, but they ought to be appraised at that amount.

MR. HAWES. Is there someone that can give us an estimated value on those ships?

MR. MILLER. I think so.

MR. HAWES. None of those ships were seized on the high seas, as I understand it; they are ships seized after internment?

MR. MILLER. Yes, sir.

MR. HAWES. And all of them were mercantile ships; that is, they were not part of the navy of Germany, excepting so far as the German Government retained the right to use them in time of war.

MR. MILLER. They were not on the active list although many ocean liners were convertible into auxiliary cruisers. Most of them were commercial vessels.

MR. HAWES. So that we have, in ships alone, an approximate security exceeding $300,000,000?

MR. MILLER. Yes, if you want to consider those ships together with this alien property; although I have made it plain that I only brought it up because I thought it was worthy of consideration in connection with this subject.

MR. HAWES. Contrasting our conduct in relation to the holding of alien property with that of Germany, as I understand you, the German Government has released a large amount of the American property originally taken over by them? Is that correct?

MR. MILLER. Yes, sir.

MR. HAWES. How much is now retained by the Government of Germany?

MR. MILLER. I am reliably informed that no property is actually held today by the German Government. But, Mr. Hawes, there were a number of cash accounts and securities held by Americans that were liquidated that are now being offered to them at the depreciated value of the mark. That should be mentioned, in all fairness, because if an American is made to accept his cash in the depreciated value of the mark, it amounts practically to confiscation. His interest is practically obliterated.

MR. HAWES. There are some 31,000 of these accounts in the United States. What is the cost of administration? What do you allow the administrator? What commission?

MR. MILLER. The Congress has appropriated, Mr. Hawes, $280,000—that is, I understand the appropriations committee recommend $280,000 for the fiscal year commencing next July. It was $370,000 last year, which was $90,000 less than my predecessor Mr. Garvan had. It has come down considerably. But in connection with that let me say that out of this we are piling up a good many millions of dollars of interest.

We have $24,000,000 of interest on deposit in the Treasury which we can not as yet allocate to any one trust; it is Uncle Sam's property.

MR. HAWES. Which interest belongs to some 31,000 claimants?

MR. MILLER. Yes, sir.

MR. HAWES. The cost of administration that I had in mind was where a bank or trust company or a manager was operating a business.

MR. MILLER. Our depositaries, which hold a large amount of our securities and administer them, have in the Depositary's Manual, under an arrangement that my predecessor made, a sliding scale of commissions. I will say, in justice to them, that most of the depositaries are endeavoring to get out of the business of handling these accounts of ours, because it is not a matter of profit for them; they took it on as a matter of duty during the war.

MR. HAWES. What do they charge for this administration, only approximately?

MR. MILLER. Well, it is approximately 5 per cent. on income collected, and a sliding scale of from 1 per cent. down on principal collected. It is a fair proposition all around.

MR. HAWES. So that every year that the Government holds these 31,000 claims someone other than the Government or the owner of this property is drawing from the property itself a commission of some sort?

MR. MILLER. Yes, sir.

MR. HAWES. There is some intermediary, not the Government and not the owner of the property, who is drawing today from 1 to 5 per cent. for handling these claims?

MR. MILLER. But, Mr. Hawes, I submit that it is not impairing these funds, because if a mortgage was given to a bank in this country by a German to handle, the real estate department of banks charged for that

service. We have, I think, made as fair a deal with them as could be made. A lot of this property had to be administered anyhow, and we took it over from the banks on this basis.

MR. HAWES. Of course, Mr. Miller, you would not want somebody to come and take your property and hand it over to somebody else and, without your consent, pay him so much for handling it?

MR. MILLER. No. But I want to say, in all fairness, that a good many of these accounts, Mr. Hawes, are in far better shape than when we took them over —that is, when my predecessors took them over. And we are always on the lookout for advantageous deals where we can get rid of the property or improve it.

MR. HAWES. That is the theory of the new progressive party, organized recently, that if the Government takes over the management of private affairs those private affairs will be very much improved.

MR. HUDDLESTON. Would it not be best for somebody to discuss that matter that knows something about it.

MR. HAWES. Nobody connected with it ever having given the public any intelligent reason for its existence, I suppose an average Congressman can guess.

MR. HUDDLESTON. But not the gentleman.

MR. HAWES. So that this $347,000,000 now held by the Government is producing for someone, not connected with the Government, and not the original owner of the property, an income, or a cost of some kind?

MR. MILLER. Yes, sir.

MR. HAWES. Approximately how much does that amount to?

MR. MILLER. Mr. Hawes, I regret my inability to give you that, and practically speaking it is impossible to give such information unless I set out to get it through——

MR. HAWES. Would it average 4 per cent. on $350,000,000?

MR. MILLER. Oh, no. Pardon me, but I do not want any such thought as that to go into the record.

MR. HAWES. You said, I believe, from 1 per cent. to 5 per cent.?

MR. MILLER. I am talking about a bank or trust company; that is, a depositary of stocks, bonds and securities. In many of these industrial plants they are making a great deal more money than before, and it has been mighty fortunate for them that they were operated by the Government during the war. I know of companies that have made millions of dollars out of uniforms for our soldiers, and when their property goes back it will go back in a far better shape and with more money in the treasury than when we took them over.

MR. HAWES. That is on the theory that a government can handle a man's business better than the man himself can handle it?

MR. MILLER. No; I do not adhere to that principle, but I do maintain that we have endeavored in this alien property situation to act as administrator or trustee just the same as if we were administering it for our own children.

MR. HAWES. Do you know what the total amount of American holdings is remaining in the hands of the German Government?

MR. MILLER. As I said before, Mr. Hawes, all of that property, I understand, has been released. But there are a number of Americans who have refused to take back their liquidated assets in money at the depreciated value of the mark, and are expecting to go to the Claims Commission for that adjudication.

MR. HAWES. Well, approximately how much?

MR. MILLER. I regret, sir, there is no way of knowing—and when I addressed the inquiry to somebody

who should know officially I received the same answer.

MR. HAWES. Neither the Alien Property Custodian nor the State Department knows? Is that it?

MR. MILLER. I addressed my inquiry to a gentleman who is connected with the German Embassy. The Claims Commission, which has stipulated that all claims must be in by December 31, will undoubtedly have that information right up to date.

MR. HAWES. Well, if the Claims Commission finds that private citizens of America have sequestered by the German Government, say, $100,000,000, are we holding back $347,000,000 for that?

MR. MILLER. No; pardon me. The American claims do not consist alone, Mr. Hawes, of alien property that has not been returned or cleared up. Most of the American claims are for loss of life and property at sea in sinkings prior to April 6, 1917. That is what constitutes the great bulk of the American claims against Germany.

MR. HAWES. Well, nobody contends that if a man has a deposit in a bank in St. Louis that money should be taken away from him, or held from him, because of sinkings at sea by the German Government.

MR. MILLER. That goes back to the general discussion, in which you and I arrived at a conclusion a few moments ago.

MR. HAWES. So that the great volume of claims, so far as you know, are for loss of life at sea and damage to American property? In other words, the German Government is not holding money belonging to American citizens in great volume in Germany?

MR. MILLER. No, sir; absolutely not. The only question is as to the value of the mark when it is offered to them in return.

MR. HAWES. So then the delay in returning all this property is not on account of a balancing of the retention of property by Germany belonging to American

citizens as against the retention by the United States of German property in the United States? There is no balancing there?

MR. MILLER. No; we are not attempting to balance that.

MR. HAWES. Aside from the matter of bookkeeping and the pressing needs of those persons who have claims under $10,000, is there any equity or justice in drawing a deadline anywhere?

MR. MILLER. Oh, no. In theory, as I told you, if a man who owns $1 is to get it back, the man who owns $1,000,000 should get it back. It is only because of the present day situation. I am not here as an objector; I am here in a positive way, to try to accellerate a preliminary step in the right direction. You know that legislation is a compromise, and I am here to try to get the best possible legislation from you gentlemen that I can.

MR. HAWES. I sympathize with your position, Mr. Miller, entirely. But in asking us to legislate either you or some other Government official did draw the deadline between $10,000 and a sum above that. In other words, you drew a deadline on $44,000,000 out of $347,000,000.

MR. MILLER. If you are looking for the culprit, I am the man that suggested the general principles of this bill, and I will plead guilty to that.

MR. HAWES. Why can not that be extended further? There is nothing here to show that Germany is holding anything of ours.

MR. MILLER. It can be extended further, if your committee really believes that it should be, under the situation existing today. As I have said very plainly, the Department of State has to do with the question of claims and negotiations with Germany, under this peace resolution which your Congress adopted last year, the terms of which I have read. I presume that

if I should propose legislation here that would wipe out this guaranty, I would run afoul of their ideas and recommendations.

MR. HAWES. This charge of from 1 to 5 per cent. for administering these accounts, is that an annual charge or is it the total charge for administration?

MR. MILLER. I think, sir, that I have not made myself plain to you. I have not my "Depositary Manual" here, but I could read to you, and will put in the record, if you wish, the rules and regulations under which these depositaries operate. They were promulgated by my predecessor, Mr. Palmer. I have not changed them.

(The witness subsequently submitted a memorandum with reference to the matter here under discussion, which was directed to be incorporated in the record, and which is here printed in full, as follows):

"EXTRACT FROM DEPOSITARY'S MANUAL OFFICE OF THE ALIEN PROPERTY CUSTODIAN.

"Rules and regulations effective November 27, 1918, showing the depositary fees paid banks and trust companies in the administration of alien property trust accounts:

"COMPENSATION.

"Depositaries are authorized to retain from the income received from properties deposited with (except in special instances) the following commissions, on gross income received, on a per annum basis in each trust; 5 per cent. on the first $5,000 or any part thereof, 3 per cent. on the next $20,000 or any part thereof, 1 per cent. on amounts in excess of $25,000.

"No commissions in excess of $1,200 will be allowed without specific authority from the Alien Property Custodian.

"For example, if $3,000 gross income is received during the next quarter, 5 per cent. should be deducted

on $2,000 and 3 per cent. on $1,000 as commissions for that quarter, etc.

"If the annual income in a trust is less than $300 a minimum commission of $15 per annum may be deducted, at the rate of $3.75 quarterly.

"Please make calculations for the year September 1 to August 31.

"In addition to the commissions allowed on the gross income received, the following percentages may be retained on principal collected from property deposited with the depositaries; 1 per cent. on the first $5,000 or any part thereof, one-half of 1 per cent. on the next $5,000 or any part thereof, one-quarter of 1 per cent. on the next $15,000 or any part thereof, one-eighth of 1 per cent. on all amounts in excess of $25,000. The maximum commission, however, not to exceed $200 in any one trust.

"The above schedule applies only to principal collected from property held by a depositary and not to cash items received by the depositary at the time of the service of demands.

"CONTINUING TRUSTS.

"In certain continuing trusts the depositary takes over no property, but receives from the fiduciary payments at regular periods of distribution. This money in turn is forwarded to this office at the time of the quarterly reports. In such cases the fiduciary continues to administer the trust, but the depositary should obtain an inventory and check the accounting filed by the fiduciary. The compensation for such services is 1 per cent. on the gross income, not to exceed, however, $1,200 per annum in any one trust.

"NONINCOME-PRODUCING PROPERTY.

"In the case of any trust having only nonincome-producing property the depositary should make the

proper charge for administering the same on its books. If property constituting such a trust should be sold by the Alien Property Custodian such charges may be deducted from the proceeds of sale, and if not sold by the end of the war, such charges will be considered when Congress determines what disposition shall be made of enemy properties.

"REAL ESTATE.

"The Alien Property Custodian reserves the right, at all times, to increase or reduce commissions of depositaries where the service rendered is of an unusual character. In some instances large collections are made with little or no work, and in such instances the usual commissions may be reduced. In other instances depositaries are called upon to perform an unusual amount of work and the commission should be correspondingly increased.

"COMPENSATION WHEN PROPERTY IS RETURNED TO FORMER OWNER ON ALLOWANCE OF CLAIM UNDER SECTION 9.

"1. Depositaries are authorized to charge commissions on income on basis set forth on page 30, as amended November 27, 1918.

"2. Depositaries are authorized to charge commissions on principal, figured on the market value thereof on the date of delivery to claimant on basis set forth on page 30, as amended November 27, 1918, the maximum commission not to exceed $200 in any one trust.

"3. Where only the right, title, and interest in securities is held, the actual certificates being elsewhere for the purpose of computing commissions, such right, title, and interest shall be deemed to be principal and commissions may be deducted in accordance with paragraph 2.

"4. In a case where there is not sufficient cash in the trust to pay the commissions authorized the depositary should collect the difference from the person to whom delivery is to be made before making such delivery."

MR. MILLER. Under that, the charges that you refer to are in the cases of banks and trust companies acting as depositaries, as they would have to do anyhow, Mr. Hawes, because in a number of these cases the securities and the mortgages are right where we found them and they are being administered and held in custody by the very bank or trust company that the Germans put them in before the war. We have adopted a very reasonable scale of compensation, and I really do not want it to go out here today that the great bulk of this property is being operated at a cost of 5 per cent. to the property; it is not.

MR. SWEET. If I may make the suggestion, does not that 5 per cent. apply simply to the income and not to the principal?

MR. MILLER. If we have some security on which there is an annual $100 dividend, for the collection of that dividend they get $5, which includes their overhead and administrative expense. If by negotiation they take down a principal for the sale of a house and we approve the deal in my office, they get 1 per cent. on the sale of the house, or less, according to the value.

MR. HAWES. And that applies only to——

MR. MILLER. To that particular transaction. I want to reiterate that a whole lot of these trusts are in much better shape than when they were taken over, and from private views expressed to me by many of the Germans, especially those who have the larger amounts here, I believe they would rather they stayed here than to take them back to Germany at the present time.

Mr. HAWES. The reason they are glad to leave some of them in the hands of the custodian is because

if they were returned to Germany they would be subject to taxes?

Mr. MILLER. To taxes, yes; and they would probably have to get a bathtub to carry their marks around with them.

Mr. HAWES. So that there are certain German moneys in the United States which the Germans themselves are very happy to leave in the condition in which they are now until the value of the mark goes up?

Mr. MILLER. I presume so. I will refer you to House Document 322, 67th Congress, a copy of which I mailed to each member of the committee. It contains what I consider some very interesting remarks on that particular point.

Mr. HAWES. So far as your department is concerned, for reasons of policy in your own department, you would not oppose an act of Congress permitting you to return all this property.

Mr. MILLER. I want to say again that the question of the return of all this property at the present time is a matter of policy in which you and the executive departments concerned are joined together in the responsibility therefor. Personally, as I have said here to-day, I sincerely hope we can clean up this whole situation, get rid of it and divorce ourselves from it, as soon as possible. I do not adhere to the principle that private property should be confiscated and be used to pay the debts of enemy countries. I do adhere to the principle, and I do not mind saying so, that something ought to be done by this Government to see that the American claimants do receive satisfaction from some source or other. Nobody will deny that.

Mr. HAWES. Certainly no. But the objection to a clean-cut liquidation and settlement does not come primarily from your department? It comes from other departments?

Mr. MILLER. I have not come here in the position of an objector. Other departments can answer for themselves. I am glad you asked the question, because I have heard that I, in my humble capacity, have been able to exert enough influence to keep this matter from being brought up. That is not so.

Mr. HAWES. That is not my information, Mr. Miller.

The CHAIRMAN. After one more question we will have some general matters to consider.

Following your last statement, the Chair would like to have you state to the Committee your judgment as to any unnecessary delay on the part of this committee in bringing out a bill for the consideration of the Committee, and maybe of Congress.

Mr. MILLER. I am glad the chairman asked that question, because I see a great number of your colleagues that are not members of this hard working and very important committee, and I have always told them that the chairman and the members of this committee have been exceedingly anxious at all times to proceed with the consideration of this subject which we have discussed here to-day and that any delays have been outside of your jurisdiction.

(After discussion as to future hearings:)

(Whereupon, at 12.10 o'clock p. m., the committee adjourned, to meet at 10 o'clock a. m. tomorrow, Friday, December 22, 1922.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Friday, December 22, 1922.

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. We will proceed with the further consideration of H. R. 13496. Colonel Miller, will you kindly resume?

STATEMENT OF HON. THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN—Resumed.

Mr. MERRITT. Colonel Miller, I want to call your attention to one aspect of this matter. I agree that it is not right or equitable for a country to take private property for the sake of public claims, but I fancy there are classes of cases—I know of one and that is the reason I am asking this question—where the Germans absolutely stripped a very extensive manufactory in Belgium, took the contents to Germany, which they have never returned, and they are not in position now to settle on any proper basis of exchange, and perhaps not at all; I do not know. It seems to me those people are entitled to have their loss made good. Of course, in war times it is not unusual to take hostages and people who are perfectly innocent and to say, "If you shoot a certain number of our nationals, we will shoot these hostages." Now, the query is, is there not some equity if Germany has taken our private property, and if she is going into a general system of destruction as she did in France and destroy orchards and trees and smash up mines just for the sake of the damage, is there not some law of reciprocity or retaliation, or whatever you may call it, which in war time would make it proper for us to keep private property until those claims of our citizens are paid?

Mr. MILLER. Your question, Mr. Merritt, touches on the American claims situation. No one denies the fact—at least I do not think they do—that American citizens who have claims for loss of life or property against Germany or any of the other former enemy powers, have a perfect right to expect from some source reimbursement for their claims after they are adjudicated by the Mixed Claims Commission, which is now sitting in Washington. No one will deny that. I should think our own citizens should have every protection.

Mr. MERRITT. No; that is not my point exactly.

Mr. MILLER. I was coming to that. As to the method of paying those claims when they are adjudicated or as to what funds to get the money to pay them from, that, of course, will have to be up to the German Government and the United States Government, and any legislation that your Congress enacts. I said very plainly yesterday that this administration makes no secret of the fact that while at the same time they are going to be very zealous in looking after the rights of their own citizens, they adhere to the time-honored principle that private property seized during stress of war is not ultimately to be confiscated for the payment of national debts.

Mr. MERRITT. Perhaps not, but that would not be a good reason for precipitately legislating to return all German private property, would it?

Mr. MILLER. I discussed that yesterday rather fully and I must again——

Mr. MERRITT. I heard you and I thought I understood you, but while it seems to me the general principle may be right, and while we may hope that ultimately we can return all the property, it seems to me there may be some equity in saying to Germany, "You must give us some sort of guaranty that we are going to get the money from some other source before we give up the property of your nationals which is in our possession."

Mr. MILLER. As I said yesterday, that is one side of the question. The other side is the unconditional return, and this bill is a middle of the road proposition for the consideration of this Congress, and the very Congress that is sitting gave us our last legislative instructions in the peace resolution as to the retention of this property. That is the last legislative instruction any department of the Government has received on this property, and that was, to retain

it until such time as these claims were satisfied. Of course, it is within the province of Congress to change that at any time.

Mr. MERRITT. That is all. I simply wanted to make sure that that particular angle was made clear, because I do not feel it would be doing justice to our own nationals if we, out of an excess of justice, perhaps, if there is such a thing as an excess of justice, let go some sort of a hold on Germany to at least make her hurry the settlement. Everybody knows that if we give up all the property, we could talk until doomsday and we would never get a cent out of them.

Mr. HAWES. Mr. Miller, I assume you are familiar with the case of Hirshman *v.* United States, in which the Chief Justice of the United States, Judge Marshall at that time, states that the seizing of private property to pay enemy debts is unthinkable in the United States. You are familiar with that?

Mr. MILLER. I am familiar with that.

Mr. HAWES. I assume your department and others will be guided largely by the opinion of the most distinguished Chief Justice America has ever had?

Mr. MILLER. It is very proper at this time to call attention to that decision, and about that time, as you recall, the treaty of 1799 with the then Kingdom of Prussia was negotiated between our infant Republic and Prussia, which provided, in the words of a layman, that the merchants of each country would have nine months within which to depart from the countries in case of war, with their goods, merchandise, etc. I am not attempting to discuss with your committee the details of the international negotiations covering the period of the last 125 years. That is within the province of the State Department and I am frankly here before you dealing with a practical, present-day problem, in this situation.

Mr. HOCH. Mr. Miller, if this property is being

held as a guaranty or security, it is for one or two purposes, or both, I take it; either to secure the payment of the claims of the United States against Germany or the claims of American nationals against Germany. Now, in a general way, what are the claims of the United States Government against Germany?

Mr. MILLER. As I understand it, Mr. Hoch, the claims of the Government as a government against Germany are inconsequential. These claims are the claims of American citizens, private American citizens, against the Imperial German Government, largely, for the loss of life and property at sea previous to April 6, 1917, and as I said yesterday, for the depreciated value of the funds seized or taken from Americans by the German custodian, and since peace offered at the depreciated value of the mark in return. As I understand it, the former administration made it plain in the Paris peace negotiations that they had no claim against Germany for reparations. You will remember that.

Mr. HOCH. Yes. Are the claims of the Government growing out of the expenses of the army of occupation involved here?

Mr. MILLER. I understand that last spring the question of that $241,000,000 that was due for the army of occupation was considered a Government claim against the present German Government, under the treaty.

Mr. HOCH. Do you think that that claim is involved in holding this property as security?

Mr. MILLER. I have understood, sir, that that was considered in the total amount of claims against Germany.

Mr. HOCH. Then the Government's claim is not inconsequential, if that is involved.

Mr. MILLER. That is a mooted question, and I do not want to pass an inquiry back to another de-

partment, but that subject of the $241,000,000 for the army of occupation is so clearly a matter that the War and State Departments are interested in, that I think it would be fatuous for me to try to discuss it, except personally.

Mr. HOCH. Let me go to another question.

Mr. MILLER. A document known as Treaty Series No. 665, shows the agreement between the United States and Germany for the Mixed Claims Commission, and shows you the character of claims they are considering. I will not insert it in the record here, but I will put the reference in the record in case anybody wants to refer to it.

Mr. HOCH. Going on to an entirely different question, I would like for you to make a general statement as to the powers that are exercised by the Alien Property Custodian over this property; for instance, with reference to the sales of the property that you have spoken of, and also with reference to the question of whether, in cases of going businesses, the Alien Property Custodian conducts those businesses as going concerns and under what general authority that is done.

Mr. MILLER. I am very glad to do that, sir, because I think there are very few people who thoroughly understand the kind of a Government shop we are running. The power of the Alien Property Custodian under the original trading with the enemy act is as powerful, perhaps, as any Government official created by law. The President, of course, under the act was given these authorities and, in turn, was permitted to delegate certain portions of them to an officer known as the Alien Property Custodian, and also to the Attorney General, some to the Secretary of the Treasury, and some to the Secretary of State. The Alien Property Custodian to-day, in all these industrial plants and corporations that he is operating, stands

in the shoes of a stockholder. He has seized and is holding that stock as a common law trustee or guardian. I would like that made plain, because there has been some discussion that we were not common law trustees, but that we could use this property to carry on commercial warfare, so to speak. That was said before the Cummins committee by one of my predecessors, but to-day we stand in the position of a trustee. If we hold a majority of the stock of a corporation, 50 and a fraction per cent, of course, we control——

Mr. HOCH. You stand in the position of a majority stockholder.

Mr. MERRITT. Yes, sir; and with all the stock you stand in the position of all the stockholders.

Mr. MILLER. Yes. If we have seized 51 or more per cent of the stock of a corporation, we control it. We are the majority stockholder, and as a majority stockholder we, of course, elect a board of directors to carry on those corporations. If we stand in the position of a minority stockholder, in many cases we have no representation whatsoever on the board, and in some cases we have been given representation as a minority interest on the boards.

Mr. HOCH. You simply hold the stock belonging to the alien whose property was seized?

Mr. MILLER. Yes, sir. These directors in the corporations in which we control a majority, of course, are our directors. It has been my policy to give every consideration possible, when we were the majority stockholder, to the minority interests if they were American stockholders. The largest plant that we have, for instance, is a woolen mill in Passaic, N. J. We own the majority of the stock in that corporation, and we are operating it to-day. We have retained in the personnel practically all the men who were employed by that corporation before it was seized.

It is a highly technical, important business, and we have kept largely the personnel that was in there when it was taken over. There are a good many people of German extraction, who have come over here and have been naturalized and are American citizens, who are to-day occupying the same positions in that mill that they were occupying when we took it over. I have in mind, also, a shipping line where we hold 100 per cent of the stock, and we are doing so well with it that the Shipping Board, a number of times, has asked us to please be a little careful, because we are operating our ships at a good profit and are sometimes taking their trade away from them, to which we replied that they are ships flying the American flag, and they are just as much American ships as any ship the Shipping Board operates; and, as I outlined in my opening statement yesterday, there are a number of other businesses we are conducting.

Mr. HOCH. You pay the operating expenses out of the receipts of the concern?

Mr. MILLER. Yes, sir; they are run just as a corporation in which you might hold some stock, and the dividends are paid on the enemy stock and are put in the Treasury of the United States and held.

Mr. HOCH. You have power to make sales of property without the consent of the owners?

Mr. MILLER. Yes, sir. Under the act we can sell any piece of property that we want to of any character. Those sales that amount to over $10,000, if they are to be a private sale, can not be consummated unless the President issues an Executive order, and sales have been conducted by the Alien Property office by private negotiation, by public sale, and under executive order. During my administration of the office, very few sales have been made. I have a list of them here, and I will put it in the record, if you want, and in each case we have endeavored

to get the assent of the so-called enemy interests; not that it is mandatory or binding upon us but so there will not be any question in the matter when this property situation is cleared up.

Mr. HOCH. Under the law could you absolutely sell all of the property which you have?

Mr. MILLER. Yes, sir; under the law to-day, the title is vested in the United States Government through the Alien Property Custodian and we can sell any or all of the property.

Mr. HOCH. You have much broader powers than the ordinary powers of a trustee.

Mr. MILLER. I think they are very broad powers and our official actions are very scrupulously considered before we take any such actions. If you want, I can put in the record the few sales we have made.

Mr. HOCH. I personally would not be particularly interested in that.

Mr. MILLER. All right. Senate Document 181, Sixty-seventh Congress which I submitted to the Senate last April, contains a list of all sales. There is the record of every transaction of our office since it was started.

Mr. HOCH. You spoke earlier in your testimony with reference to going carefully into the matter of any transfers that might be made of the rights of any of these owners, and you said that if this bill becomes a law and you carry out its provisions, you will be very careful to see that no advantage is taken of any one with reference to securing transfer of the rights that these alien property owners may have in this property. I was curious to know what sort of procedure you would apply, in a general way, in determining the bona fides of any transfer of the rights of those owners. It seems to me it would be a rather difficult matter to go into a determination of that matter to see whether in buying the rights of these own-

ers the purchaser had taken advantage of the owners.

Mr. MILLER. I understand there are two different classes. The first class, as I explained yesterday, are the people who have friends or relatives in Germany and whose property is held by this office. They have suffered privations in the last few years and have needed money, and they have had money advanced to them, either by money order or cable or other means, and I have told them, informally, I would make every endeavor to see to it that when this property was returned we would be able to accept assignments from their friends of their interest in this property to the extent of the money they had advanced. That is one class. Another class, I understand, are a good many American soldiers who bought from people in Germany certificates of stock in American corporations. Of course, when the American soldier bought a certificate of stock he did not know that that certificate of stock represented nothing, because if we had seized the right, title, and interest in that stock and had served a demand on the corporation we could force them, under court decisions, to issue us a new certificate which canceled the old one. Another class are what we term "ambulance chasers," who went into Germany and Austria and Hungary and signed up a lot of claims. While I am discussing that I want to say that I am reliably informed that a great number of the claims of Americans against Germany for damages are signed up by attorneys at very excessive fees; and I am informed that the bill can further be reduced of the American claims against Germany if you take into consideration excessive attorneys' contracts that the American claimants have made.

Mr. HOCH. I was interested in that phase to know how thoroughly you would go into it and how practicable it would be to go into that matter——

Mr. MILLER. Here is the way I would do it.

Mr. HOCH (continuing). To determine whether they were cases of ambulance chasers or not.

Mr. MILLER. Here is the way I would go into that: Let us suppose the assignment has come to us for $1,000 for money that was sent back. I would want to see proof that this money had gone to them; and if it had gone, we would require a money-order receipt or a canceled draft or cable authorizing the payment of it. We have plenty of power under the act to insist on proper affidavits and evidence.

Mr. HOCH. Just one other question: I notice on the statement that you submitted here yesterday, it gives something over $200,000,000 of claims that have been paid. In a general way, what were those claims and under what circumstances was that property returned?

Mr. MILLER. That has been returned, in a large measure, Mr. Hoch, under the amendments of the act of June 20, 1920, and February 27, 1921. There are some eight classes of people to whom the property was returned under those amendments and they are the old part of House bill 13496, which is not in italics, in section 1.

Mr. HOCH. Were those mainly claims of American citizens?

Mr. MILLER. No, sir; I will tell you just what they are. They are the claims of citizens of Alsace and Lorraine, formerly a portion of the German Empire; citizens of Poland, formerly a part of the German Empire. They are also the citizens of the Kingdom of Denmark, residing in that portion of Schleswig-Holstein, formerly a portion of the German Empire. They are also citizens of the Kingdom of the Serbs, Croats, and Slovens residing in territory formerly a part of the Austria-Hungary Empire; citizens of the Kingdom of Italy residing in the territory formerly a part of the Austria-Hungary Empire; citizens of

Poland in parts of Galicia and Silesia; citizens of Czecho-Slovakia and citizens of Rumania; also citizens of Bulgaria and Turkey, and those Russians living in occupied territory taken over by Germany or Austria. There are also interned enemies. Every interned enemy at Fort Douglas, Ariz., and Oglethorpe, Ga., who, upon their release, signified their intention of residing in this country, had his property returned to him. It also includes Americans whose property was reported as that of an American citizen residing in enemy territory or in territory occupied by the enemy, and they were eligible for return under proof of citizenship. It also includes those American women who married a German, Austrian or Hungarian, or other enemy previous to April 6, 1917, and who could give proper proof of marriage, and so forth.

Mr. HOCH. I want to ask you now about just one other matter. On page 11 I want to ask you a question or two with reference to paragraph (g). I note that it says "this section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof," nor to some other cases. In a general way, what is the money paid to the Alien Property Custodian under section 10?

Mr. MILLER. Under section 10 we were authorized to license patents and in return therefor receive a consideration, either a lump-sum consideration or a consideration paid out of royalties; and section 10 further provided that within one year after a state of peace the licensee could bring a suit for the recovery of those royalties. That time was up July last.

Mr. HOCH. This provides that the provisions for this return provided in this present bill shall not apply to those royalties nor to any patent, trade-mark, print, label, or copyright, conveyed, transferred, assigned, or delivered to the Alien Property Custodian,

or to the net proceeds received from the sale of any such patent, trade-mark, print, label, or copyright. I take it that if this bill becomes a law, you have two general classes of property to which this $10,000 provision is not to apply, namely, the money that already may be paid under section 10 and then that covered by this additional language. What reason is there for making these exceptions as provided in paragraph (g)?

Mr. MILLER. As brought out in the hearings yesterday, this section (g) was not initiated by the office of the Alien Property Custodian. I understand that the War and Navy Departments are interested in it, but as long as you have asked me the question I will give you my version, as the language is included herein. You will remember yesterday the chairman asked if one or two additional words could go in, and I replied that it was up to your committee to change it as you saw fit, but this would in effect, I understand, protect the present patent situation, as created by the Chemical Foundation suit. There were some 5,000 patents, trade-marks, and copyrights sold to the Chemical Foundation by my predecessors in office for $250,000. If the principles of this bill you are considering should become the law, I understand that it will be rather difficult to subdivide the return of the $250,000 to the people who originally owned all those 5,000 patents; and at the present time, as you know, the Government is bringing an action in the district court in Delaware for a decision as to the ownership of these patents; that is the Chemical Foundation suit. On the other hand, I understand the Navy Department and the War Department, who are represented here to-day, have their views on the subject, and I shall not, of course, attempt to discuss that because I do not know what they are.

Mr. HOCH. Even leaving out the part that is in

italics, there is an exception provided with reference to section 10.

Mr. MILLER. That is the old law, Mr. Hoch.

Mr. HOCH. Yes; but it becomes a new law when you make it a part of this new section, because the old law did not carry 5-a and 5-b, on page 6, and it now carries it, and when you write it again it provides that the provisions of 5-a and 5-b shall not apply to the money received under section 10.

Mr. MILLER. The words "this section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof" is the law to-day, and I presume it was put in there because paragraph (f) of section 10 deals with the patent situation under the present law existing to-day.

Mr. HOCH. But it becomes an entirely new law. It changes the law, because it says "this section"; now, what section?

Mr. MILLER. That means section 9.

Mr. HOCH. Section 9; yes.

Mr. MILLER. Because the patent situation under the present law existing to-day is taken care of in section 10, paragraph (f). Would you like to glance at that?

Mr. HOCH. I perhaps do not make clear my question. In (g) it says this section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof. Now, it is true that that language is in the present law, but when you change this section and put in new provisions you effectively change the meaning of that language, although it is the same language that is in the law at present.

Mr. SANDERS. The same as if it read, "this section as amended."

Mr. HOCH. Yes; certainly. What is the reason that the money paid under section 10 should not have

applied to it the rule you seek to apply in 5 a and 5 b.

Mr. MILLER. Section 10 (f), Mr. Hoch, is in the law to-day and was put in the law, as I understand it——

Mr. HOCH. Section 9 (f)?

Mr. MILLER. No; I am talking about Section 10. Section 10 of the trading with the enemy act to-day, paragraph (f), provides for the return of royalties that have been paid into my office during the licensing of these patents and I am merely in the position of a stakeholder, and Congress provided in the trading with the enemy act that within one year after the war closed the former enemy owner and the American licensee could, if they wanted to, enter into court action to determine what was to become of these royalties. I merely am a stakeholder, and last June, previous to July 2, 1922, as trustee for the enemy, I brought a great number of suits to protect their rights, and they are now pending in the courts to-day, to decide what becomes of these royalties, whether they go back to the Americans to whom the patents were licensed or whether they go into the trust account of the enemy from whom the patent was taken. It is a provision of the existing law to-day.

Mr. HOCH. So there is ample law for the return of the money under section 10 without any provisions set out in this bill?

Mr. MILLER. Oh, yes. The return of royalties is taken care of in the law to-day. I understand this italicized part of (g) is for the protection of certain patents that the Navy and War Departments have.

Mr. HOCH. Well, I will defer any questions on that until other witnesses appear before the committee.

Mr. NEWTON. I have just this question which I neglected to ask yesterday and it is somewhat along the line of the questions Mr. Hoch has been asking. There has been a good deal of talk in the newspapers in ref-

erence to the sale of the dye patents and also some others—the Bosch magneto, and so on—for wholly inadequate sums.

Mr. MILLER. Yes.

Mr. NEWTON. Now, I have no opinion in reference to the merits of any of those contentions and know nothing about them, but is there anything in this bill that would in any way affect those suits or the bringing of those suits or the protecting of the rights of the enemies whose property was taken and whose property it is claimed has been sold for wholly inadequate considerations?

Mr. MILLER. There is nothing, Mr. Newton, in this bill that will in any way destroy the rights of anyone to bring suit to open up those transactions. As you have seen by the papers, one is before the district court in Delaware and the other is before the grand jury in New York, and we were very careful in drawing our legislation to see that nobody's rights were in any way destroyed.

Mr. DENISON. Mr. Miller, in that connection, the two morning papers, the Herald and the Post, in referring to that subject, said that there is a joker in the bill in reference to the alien property. You have no doubt seen that?

Mr. MILLER. Yes, sir; I read it.

Mr. DENISON. Is there any foundation whatever, in fact, for that conclusion, that there is any joker in here and if so I would like to get a little light on it.

Mr. MILLER. I was a little bit chagrined that our three hours of discussion here yesterday resulted in no more press copy than those two articles, because I think we discussed this section (g) for only about a minute on yesterday, and gave the rest of the time to the principles of the legislation that the Alien Property Custodian has been asked to recommend. As to my opinion as to whether it is a joker or not, I should

not think that an executive department like the War Department or the Navy Department would try to put a joker over on a congressional committee.

Mr. HOCH. They couldn't do it on this committee.

Mr. DENISON. The statement goes out to the country in these papers that there is a joker and I was just wondering what would justify that sort of conclusion.

The CHAIRMAN. Mr. Denison, do you know of any way of controlling the press from putting out statements about so-called "jokers"?

Mr. DENISON. No; I do not, Mr. Chairman.

Mr. MILLER. Unfortunately, I did not prepare any press copy for the newspapers yesterday, and did not think it was my business to do so, but I am very sorry that that is the only point that was gleaned from our hearing yesterday.

Mr. MAPES. The story in the Post seems to convey the impression, at least, that you were opposed to this provision relative to patents.

Mr. MILLER. I said nothing yesterday that would indicate any opposition or sponsorship. As I have said before, and as the chairman said, I think, this matter was put in as a result of a Navy and War department communication.

The CHAIRMAN. The chairman assumes all responsibility for that provision.

Mr. MAPES. Yes; but have you any opposition to it or objection to it?

Mr. MILLER. Why, as a trustee for the aliens, I want, of course, to see all their rights preserved. As I said, a moment ago, personally I could very well see how, with the big suit of the Government against the Chemical Foundation, in which most of these patents are involved, or at least the ones that are worth anything whatsoever, the Department of Justice might be

interested in seeing that the Government's rights were properly protected.

Mr. MAPES. In your opinion, would it affect the proceedings that the Department of Justice is requested by the President to take against the Chemical Foundation?

Mr. MILLER. I think it has a bearing on that suit; yes, sir. As I said a few minutes ago, we hold a quarter of a million dollars from the sale of those 5,000 patents and trade-marks, and it is going to be a rather difficult matter for us to divide that up among the claimants, if they come in, especially when the property in question is tied up in the United States courts as to who really owns it to-day.

Mr. MAPES. Do you think the enactment of this paragraph in the law might embarrass that proceeding?

Mr. MILLER. I should think your committee would have to enact some provision in this bill, whether it is similar to section (g) or not I am not prepared to say, that would take cognizance of the existing patent situation to-day.

Mr. MAPES. You mean by that the suit?

Mr. MILLER. The suit, largely, because most of the patents that are worth anything are tied up in that suit.

Mr. MAPES. And do you feel this might embarrass that suit; that is, the enactment of this provision in the bill.

Mr. MILLER. No; I do not say that, Mr. Mapes; that this particular language would embarrass that. I said I think you ought to take cognizance of the patent situation that exists to-day and some legislation should be carried in this bill.

Mr. MAPES. Just what would be the provision you have in mind?

Mr. MILLER. Here is the trouble: Every patent,

as you know, is inventoried at $1 and carried on my books at $1. That is just a nominal valuation. Now, a man comes along and says, "You passed a $10,000 law and you say that my patent is worth $1. Give it back to me," and we would have to say, "We can not give it back to you. It is tied up just now in a suit between the United States Government and some people who claim they own it." That is simply putting it broadly.

Mr. MAPES. As one member of the committee, I would be glad to know what your views are, from your study and knowledge of the situation, as to what the provision ought to be in regard to that, and also what the answer is to the story in the paper this morning.

The CHAIRMAN. If the gentleman will permit me to interrupt, I would like to make this suggestion: If there is any opportunity for concealing a "joker" in this bill it would not lie in the direction of this provision having been put in the bill but rather than by virtue of its omission, if such were the case.

Mr. MAPES. Let me say that my questions are not prompted by any thought the provision is a joker.

The CHAIRMAN. Then I may have uttered my statement at the wrong time. I wanted it in the record, however, at some time.

Mr. MAPES. The bill comes before us in a perfectly legitimate way and we are here to discuss the provisions of it.

The CHAIRMAN. By all means.

Mr. MAPES. And as one member of the committee, I would like a little expert information about it, as to what the provision ought to be and as to what action the committee ought to take in the matter.

Mr. MILLER. If that is a direct question, I have no hesitancy in saying, I think it will be necessary for your committee to provide some legislation; whether this particular language or not I do not say, that will

take care of the views of the War and Navy Departments; but it is absolutely up to your committee and those two departments to thrash out the verbiage.

Mr. MAPES. I take it that the Alien Property Custodian has probably given this subject as much consideration as anybody, and for one I would be glad to know just what you think about that.

Mr. MILLER. That is what I have to say about the War and Navy Departments' interest. I have already indicated to you my personal view as to the situation that might be existing in connection with the Government's suit against the Chemical Foundation, but as I have said I am a trustee for these people and the guardian of their property, and if you tell me to give back $10,000 out of each trust, and a party comes in that has a patent worth less than $10,000, and it will take some trouble to prove it, I would give it back to him unless I was on the contrary prevented by some legislation.

Mr. MAPES. Before the legislation is passed, I think the committee would be glad to have your notion as to whether you should be directed one way or the other.

Mr. MILLER. I should think, unless you did say something in the legislation, I would find myself up against some difficulties right away that would have to be probably determined in the courts. I am sure I would not attempt to rule on them.

Mr. MAPES. I take it from your answers you do not care to express your judgment as to whether this is a good or bad provision.

Mr. MILLER. Well, I think the language of paragraph (g) will have to be altered. I should think it would, and the chairman yesterday suggested one or two words, and I have had a number of people call me up and talk to me about it since the hearing yesterday.

Mr. MAPES. Would you care to say in what way you think it ought to be altered?

Mr. MILLER. As it exists there to-day it is too broad. If it is amended at all it should be amended so as to cover the principles of this particular bill, namely, the $10,000 return, and also the American claimants of patents, the ownership of which is now in litigation.

Mr. MAPES. If it is amended in those two particulars, you think it would cover the situation as far as your office is concerned?

Mr. MILLER. I do; but I want you to hear from the War and Navy Departments; that is, I should want you to hear from them if I was running it.

Mr. MAPES. Do you care to say just what the interests of the War and Navy departments are in this matter?

Mr. MILLER. I am not prepared to say, Mr. Mapes. I understand that the departments involved have communicated officially with your committee.

Mr. MAPES. I was interested to know, during the discussion, whether Germany has an officer who holds a position analogous to yours?

Mr. MILLER. Yes, sir; I do not know what his official name is, but we call him the German custodian.

Mr. MAPES. And as you say, they are prepared to pay back all the American claims in present German marks. Have they passed legislation discontinuing the office?

Mr. MILLER. No; as I said yesterday, they do not operate under the same rules we do here. They do not have to get a bill through their Reichstag, but by their orders in council or their President they can return classes of seized enemy property, and they have returned to Americans most of the real estate and industrial plants and properties like that, but a good part of the American property seized by the Germans

was in gilt-edged securities and cash, and of course, they liquidated them, and now the Americans I understand are offered it back at the depreciated value of the mark which, as you know, is practically nothing, and those are the classes of claims that the Mixed Claims Commission is considering to-day.

Mr. MAPES. Have the going concerns or the going businesses owned by Americans very largely been turned back?

Mr. MILLER. That is what I have been reliably informed; yes, sir. And pardon me, while you are on that question, the Austria-Hungary Government did not have an alien property custodian and they did not, so far as I can find, of all the nations involved in this war, seize property.

Mr. MAPES. Does existing law authorize you to turn back property that you hold of all people except alien enemies?

Mr. MILLER. Except the Germans, Austrians, and Hungarians, and those people from whom the bar of expatriation has not been removed.

Mr. MAPES. I notice in the statement you gave us yesterday that the totals have increased from time to time, even between your last two statements. Is that due to the profits of the property or are you still taking over property.

Mr. MILLER. First, it is largely due to the profits of these big businesses that we are running and the dividends that are coming in; and, secondly, a number of uncomplied demands have been reduced to possession. I am glad you asked the question. The only property this office has seized under the present administration is the property belonging to the arch slacker of all, Grover Cleveland Bergdoll. We seized that property because he was in a country with which we were technically at war before July 2, 1921, and the peace resolution also contained a provision that

the alien property custodian was still empowered to enforce demands issued before peace was declared, for this reason: There were a number of people who had defied the law, and if such a provision had not been put in the law, it would have discriminated against those people who had obeyed the law and surrendered their property in favor of these people who had been opposing us, but since then we have cleared up almost all those outstanding demands and to-day we do not persecute people and try to take properties from them. It has been said in the Senate we were, but we are not.

Mr. GRAHAM. I would like to ask just a question or two. Colonel Miller, I assume you are conversant somewhat with the treaties that existed between this country and the German Empire at the time we went into the war. The treaty under which we were in diplomatic relations with them was the treaty with the Kingdom of Prussia, was it not?

Mr. MILLER. Yes, sir; the treaty of 1799, as further changed by the treaty of 1828.

Mr. GRAHAM. That was still held to be in force and effect?

Mr. MILLER. Oh, yes.

Mr. GRAHAM. That treaty had a provision in it, did it not, that the property of private citizens in the two countries should be held to be private property and not subject to the vicissitudes of war?

Mr. MILLER. I can not quote you the exact provision but generally speaking, yes. As I said a moment ago, it contained a provision something like this, in the event of war the merchants of each country should be permitted to depart from the respective countries with their goods, wares, and merchandise. I am sorry I have not got the data with me to answer that more specifically, but generally speaking, yes.

But, on the other hand, some people say that treaties are abrogated by war.

Mr. GRAHAM. Well, that may be true, and yet when peace is resumed, the question in my mind is whether the rights secured by the treaty ought not to automatically return also. Do you know whether any construction of that treaty has been given by the State Department

Mr. MILLER. No, sir; I do not.

Mr. GRAHAM. I wish, in connection with your remarks here, you would insert in the record a copy of that treaty with the Kingdom of Prussia. It is short, as I remember it, and ought to be in the record.

Mr. MILLER. I have right here, Mr. Graham, Article 23 of the treaty entered into between the United States and Prussia in 1799. It is very brief. Do you want me to read it?

Mr. GRAHAM. Yes; if it is about property rights, I do.

Mr. MILLER. "ART. 23. If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance; and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such

armed force, the same shall be paid for at a reasonable price."

Mr. GRAHAM. Nobody ever questioned the binding force or effect of those provisions, did they, in this country up to the time we went into war with Germany?

Mr. MILLER. Oh, no. I should say you were quite correct.

Mr. GRAHAM. Now, in your search for precedents in this matter, did you ever know of any nation that ever before in the history of modern times took the property of private persons and applied them to national debts?

Mr. MILLER. No; Mr. Graham. This great war that came upon the world in 1914 has brought about a condition of affairs that seems to have smashed all precedents and all international law, and the trading with the enemy act is a peculiar creature, in modern civilized times, of the present war, and all nations on both sides seem to have had a trading with the enemy act except, as I said a while ago, Austria-Hungary; that is, all the big nations.

Mr. GRAHAM. In the relations between France and Great Britain and Germany, have the two nations first above named seized any private property of enemy nationals and held it for reparations?

Mr. MILLER. Oh, yes; all private property seized by those respective governments is being liquidated and the claims of the respective nationals are being adjusted by their governments through a clearing house association, and yesterday I briefly described that.

Mr. GRAHAM. Unfortunately I was detained yesterday and did not get to hear all of your testimony.

Mr. MILLER. Do you want me to tell you briefly about that?

Mr. GRAHAM. You need not repeat it because these

gentlemen have heard it and I will get it from the record. I do not want to travel over anything that you have already gone over, but tell me briefly how much is the probable aggregate of the claims of our people against the German Empire?

Mr. MILLER. I was informed informally that the dead line set for the filing of these claims would be December 31, 1922, next week, and might find as much as $1,000,000,000 in claims filed, but all experiences of the past show that war claims of that character have universally been settled on a basis of 7 or 8 per cent, so do not be alarmed by a billion-dollar claim against Germany; and as I said a while ago, and this is merely informal, if they would scrutinize some of the contracts that some of these American claimants have with lawyers, they would find very excessive fees for the recovery of this property, because the average American claimant thinks that the claim is nebulous and somewhat up in the air anyhow, and he is just taking a long shot at it.

Mr. GRAHAM. Now, let me ask you something else, and I do not know whether I am getting on too delicate ground here or not, but what is the chance of American claimants to get their claims from the German Empire in the ordinary process of events if they do not have this fund to draw upon?

Mr. MILLER. Well, I should think that with the claims around $100,000,000, as finally adjudicated, that some way could be found to pay these claims. I understand that the mixed claims commission, operating under the State Department, has some ideas along that line, and I want to say that I do not like to intrude on the prerogatives of an executive department, but I am willing to discuss it on the basis of my personal views, because of the study I have made. If the worst came to the worst, some arrangement could be made whereby the claims could be paid by the Govern-

ment and some arrangement made with Germany to issue bonds over a period of years, which could be paid to us as conditions improved. You know we are still fighting over French spoliation claims 125 years old.

Mr. MERRITT. That is encouraging.

Mr. MILLER. It is to be hoped that the backwash of this war will be cleaned up much sooner.

Mr. GRAHAM. The thought that was in my mind was that possibly if there was no chance to collect these American claims in any other way—and it has been commonly stated, you know, that the German financial condition is very bad and probably will not be better soon—that it might be justifiable to hold some part of this fund as a security for the American claims.

Mr. MILLER. It has been suggested, Mr. Graham, that a number of the large German interests whose property we hold would be only too glad to leave a portion of their funds over here to be invested in some way in a fiscal corporation under Government supervision which in turn would earn the money to pay back these claims, and they have made no secret to me whenever they have talked with me that the worst thing that could happen to them in their own opinion would be for their millions to go back to Germany today.

Mr. GRAHAM. How did you arrive at this arbitrary limitation of $10,000?

Mr. MILLER. Purely because some deadline had to be drawn and the other governmental authorities with whom I have to deal asked me, in suggesting this legislation, not to reduce the fund over a certain amount because of the instructions that you have given them in the peace resolution.

Mr. GRAHAM. That peace resolution and treaty with Germany, by which you are practically directed to keep this money——

Mr. MILLER. This very Congress directed us to retain it.

Mr. GRAHAM. Yes; I know we did. I read it last night and I was rather surprised at the firmness of the language. I had not recalled that it was that strong, but it is a positive direction almost to keep it.

Mr. MILLER. And they are the last instructions.

Mr. GRAHAM. Now, this bill will lift the limitation in that treaty a little bit.

Mr. MILLER. Yes, sir.

Mr. GRAHAM. Now, then, why should we not lift it a little bit more? If the probable approximate amount of our claims is $100,000,000, and I concede it is a pretty good plan to hold on to some of that money as a matter of security, why not say claims of not less than $20,000 or in some other way permit the loosening up of these funds so that they can go back to the place where they ought to go and still retain a sufficient amount; but if you are going to keep $340,000,000, what is the necessity for that?

Mr. MILLER. That is perfectly proper and I would be only too happy to see the deadline increased; but in all fairness, I must say that the Department of State would have to be heard on that matter, because that is the department that I referred to as having been interested in carrying out the provisions of your treaty.

Mr. GRAHAM. Suppose we put a limitation of $20,000, how much difference would that make on this proposition?

Mr. MILLER. That would drive it up considerably, Mr. Graham; and I have had in mind, Mr. Graham, that a bill carrying approximately a return of $50,000,000 at this time was what we were trying to accomplish; but that is up to the Congress to decide.

Mr. GRAHAM. Is there any executive policy of that kind outside of your department that you know of?

Mr. MILLER. Needless to say, I am not down here unless higher authority has been consulted, and I have endeavored to draw this bill in accordance with what I understood my instructions to be.

Mr. GRAHAM. How much of this bill did your department draw?

Mr. MILLER. All of it in italics, with the exception of section (g) on page 11.

Mr. GRAHAM. Do you know who drew that?

The CHAIRMAN. I did.

Mr. MILLER. The chairman has answered that this morning.

Mr. GRAHAM. I am not criticizing it at all.

The CHAIRMAN. Apparently I did not do it very well, because there ought to be at least two amendments made thereto.

Mr. BARKLEY. Mr. Miller, I have just one question. You have perhaps indicated your attitude in the matter, but it strikes me as a matter of justice and equity that the size of a claim ought not to determine whether it is to be held as surety for some debt that the citizens of this country may hold against Germany. What is the basis for this legislation as a matter of strict justice between the people who own the property held by the Government?

Mr. MILLER. That question, sir, was asked and very fully discussed pro and con yesterday, Mr. Barkley; and all I have to say is that I reiterate my views expressed at that time. In theory there is no answer. It is not debatable. If a man has $1 or $1,000,000, if $1 goes back in theory all of it should go back; but unfortunately I have to deal with present-day conditions, and have explained that this is a middle-of-the-road bill.

Mr. BARKLEY. I do not care to have you go over

your statement. I could not be here yesterday and I did not hear your discussion of that point.

Mr. HAWES. Mr. Miller, Mr. Graham asked you about the treaty with Prussia, and you hastily read a portion of it. I do not want you to be put in the position of having omitted a very important portion of that treaty, which reads as follows:

"And it is declared, that neither the pretense that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but, on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature and nations."

Mr. MILLER. Have you the same document that I have before me?

Mr. HAWES. I do not know.

Mr. MILLER. I have that right here.

Mr. HAWES. Mr. Miller, is it not a fact that the property which Germany is now holding is only that money which is on deposit. All other character of American property has been returned to American citizens.

Mr. MILLER. Yes; I am informed that that is the case.

Mr. HAWES. And is it not also a fact that the money that has been received has been held in the form of marks, in the same form in which it was deposited and that the only remaining dispute as between civilians of Germany and civilians of the United States is the question of settlement in dollars or in marks.

Mr. MILLER. Yes, sir; it is a matter of the valuation of the mark.

Mr. HAWES. That is the only controversy be-

tween the civil populations, we might call it, of Germany, and the civil population of the United States.

Mr. MILLER. I should say that was a controversy between the American private citizens and the German Government because it is the German Government that is holding the money.

Mr. HAWES. Mr. Miller, we have been talking so far about that section of the bill which relates to Germany. This bill also covers the matter of Austria-Hungary. When the United States entered into the war, the Austrian-Hungarian nation had a population of 52,000,000 people. It has now been reduced by the treaty of Versailles to a population of only 6,500,000, and out of the old Dominion of Austria-Hungary has been carved six different nations, Czecoslovakia, Yugoslavia, Poland, part of Italy, Rumania, and the Republic of Austria-Hungary. Now, some of the property of the countries which have been carved out of Austria has been returned, has it not?

Mr. MILLER. Yes, sir; that is what the large portions of our returns were for.

Mr. HAWES. So that if any property is held to-day on the theory that it was enemy property, it can only be on the theory that the United States is holding a nation which now consists of six and a half million people responsible for a nation that formerly was composed of 52,000,000 people. Is that a correct statement of facts?

Mr. MILLER. Yes, sir; and I am glad you brought it out.

Mr. HAWES. In other words, unless all of this property is released, it is on its face a manifest injustice.

Mr. MILLER. May I be perfectly frank with the committee?

Mr. HAWES. Yes.

Mr. MILLER. I have recommended in conferences

and in communications for a period of a year—as soon as I was able to master the situation—the divorcement of the Austrian-Hungarian situation from the German situation, if the present government of Austria and Hungary were to suffer because of a long time retention of the German property. I have not hesitated to recommend it. I know the chairman of the committee has had some correspondence with me on the subject, and I understand that until very recently, it looked as if the Austrian-Hungarian situation would be divorced from the German situation, until they discovered that there had been some claims filed by American citizens against the Imperial and Royal Austrian-Hungarian Government. I submit, in fairness, to those two infant nations to-day, which were created by the treaty, should not be expected to bear the brunt of the old Austria-Hungary Empire. To-day, we hold approximately $2,000,000 of Hungarian property, and I have yet been unable to estimate the accurate valuation of the Austrian property, but it is not over eight or nine million dollars, and I was very disappointed when I found that because of some claims, filed, I could not include in my recommendations on this general legislation an unconditional release of Austrian-Hungarian property to-day.

Mr. HAWES. What is the character of those claims, Mr. Miller, in a general way.

Mr. MILLER. I understand there were some Austrian submarines in the Mediterranean and Adriatic. I understand it applies to some of those operations, but they are all mixed up in the general mass of claims filed with the Mixed Claims Commission, and without running counter to other departmental recommendations, I, myself, would favor the unconditional return to-day of Austrian-Hungarian property.

Mr. HAWES. And Austria-Hungary is the only

nation in Europe that did not seize American property during the war.

Mr. MILLER. They are. Now, I do not want to get into conflict with the Department of State, which may come back and say, "Here is something they did do"; I have it informally from the representatives of those governments here, and they are the ones that should know.

Mr. HAWES. So the status of the Austria-Hungary portion of this bill is this: In the first place, they did not seize the property of Americans during the war, and in the second place, what was Austria-Hungary is now six different republics or monarchies, and we are trying to hold the Austrian Government responsible, in an indirect way, for the conduct of five other governments over which they have no control.

Mr. MILLER. Yes, sir; that is the situation, and I have recommended to the Chairman in response to his letters to me, as chairman, action on the Austrian-Hungarian property as I have outlined.

Mr. HAWES. And you would recommend an amendment in this bill which would now release all property of the former Empire of Austria-Hungary that is held?

Mr. MILLER. I do; and a number of those cases are pathetic cases. We hold hundreds of death benefits which we have collected on account of their nationals who were killed out in the steel mills and in the mines of the West, and we would like to give that back to them.

Mr. HAWES. So we are violating the traditions of international law, the opinion of Marshall and the dictates of humanity and all spirit of equity in holding these claims.

Mr. MILLER. May I put in there, so anyone reading this testimony will understand my position: I am willing to recommend this, but, on the other hand,

if the State Department comes to the hearings and through their representatives say there are claims against Austria, I do not want to be criticized for suggesting this, but I have done it personally.

Mr. HAWES. Is there any doubt in your mind, Mr. Miller, or ought there to be in the mind of any man, any doubt that, if the United States Government presents a claim to Germany for loss of life, there would be only one question open, and that would be the amount to be paid, and that Germany would pay it promptly?

Mr. MILLER. I understand that the Germans themselves are very anxious to find a way to work out this claim situation so that we can proceed again on a peace-time basis.

Mr. HAWES. And so they could pay any just claim they owe to this country.

Mr. MILLER. You mean are they able to pay it to-day?

Mr. HAWES. I mean as soon as the claims are established they are willing to pay.

Mr. MILLER. They are willing to pay, yes. As to their ability to pay, I am not prepared to say.

The CHAIRMAN. Colonel Miller, is there anything further to be said in differentiation or in the matter of contrasting the Austria-Hungary situation with that of Germany proper?

Mr. MILLER. I can not speak, Mr. Chairman, more plainly than I have in my discussions with the gentleman from Missouri, and I am willing to place portions of our correspondence in the record at this point if you care to have me do so.

The CHAIRMAN. There is nothing there except what you have stated. There is no objection, but it will simply lumber up the record.

Mr. HAWES. As to the character of those claims

against the Austrian Government, are not nearly all of them made by insurance companies?

Mr. MILLER. I think they are, sir, but I am not certain.

Mr. NEWTON. Colonel Miller, just what is the value of the mark that the German Government plans to use with which to pay these American claims?

Mr. MILLER. That is a question that is right up now to the Mixed Claims Commission, upon which is a representative of Germany and America.

Mr. NEWTON. The German Government made the proposal to pay back these American claimants in German marks. That was before it went to the Mixed Claims Commission?

Mr. MILLER. Yes.

Mr. NEWTON. What was the value of the mark at the time when they proposed to pay back these American claimants in marks?

Mr. MILLER. It was then about one-third of a cent a mark.

Mr. NEWTON. And the value at the time when they seized it was what?

Mr. MILLER. About 22.3 cents.

Mr. NEWTON. So the only difference which has been emphasized between the American claimants and the German Government is the difference between 22 cents in American money and one-third of a cent. That is not much difference.

Mr. MILLER. Between 22 cents and a third of a cent in that class of claims growing out of seized property in Germany.

Mr. NEWTON. So it is pretty near time, is it not, that this Government should at least retard a settlement upon these larger claims until American citizens have some opportunity of getting 22 cents instead of one-third of a cent?

Mr. MILLER. That is a very strong argument for

American claims, and I have said here time and again this administration is not unmindful of the rights of its own citizens in these American claims.

Mr. SANDERS. Mr. Miller, it is not an improper or an unusual thing for a government to take an interest in its own citizens, is it?

Mr. MILLER. That is what the governments are for.

Mr. SANDERS. As a matter of fact, under international law, alien enemy property is subject to confiscation if need be by the Government?

Mr. MILLER. A government, in time of war, can confiscate the property of its own people.

Mr. SANDERS. And when you talk about this property that was owned by the aliens, you are talking about a former ownership and not the present ownership?

Mr. MILLER. Yes, sir; the title now is in the United States.

Mr. SANDERS. The title now has been taken by the United States Government, and it was taken by the United States when that alien was making war against this country; is not that true?

Mr. MILLER. When his nation was; yes.

Mr. SANDERS. And it is not an improper thing, since we seized that property during the war, in the hands of aliens who were fighting us, for us to use any leverage that we may have by the withholding of the property of their nationals in order to take care of our own nationals, whose property our former enemy held.

Mr. MILLER. I think it is perfectly proper, using your language, to use it as a leverage, but I have tried to make it plain we do not want to hold it and ultimately confiscate it.

Mr. SANDERS. No; but the State Department or some other department may have reason to know that

this Government that was formerly our enemy will be more active and energetic in taking care of our claims if some of their people who are here and in whom that Government has an interest, still have some rights to be asserted against our Government.

Mr. MILLER. And that is the reason you wrote the peace resolution as you did, I presume.

Mr. SANDERS. Now, when you talk about a treaty we had with Prussia, which provided that when we got into war it should not be abrogated, of course that is a good deal like writing a contract for two parties and providing in the contract that a subsequent oral agreement shall not vary the contract, and the courts have always held that when there is a subsequent oral agreement that does vitiate the contract; that it is a later agreement and, as a matter of fact, wipes out the former contract.

Mr. MILLER. Well, one of the principles of international law is that a declaration of war abrogates all treaties in spite of any language of that sort.

Mr. SANDERS. When you create a situation where two nations are fighting each other and are at war, and have the right under international law to invade the territory and destroy all the people, that act of war destroys all former treaties, does it not? At least during such war?

Mr. MILLER. It has been held, as I have said, that a declaration of war abrogates treaties, and a law by Congress such as the trading with the enemy act of course can abrogate the provisions of any treaty.

Mr. SANDERS. Of course, your department is exceedingly anxious not to do an injustice to an alien who happened to reside here during the war and whose property we have taken in carrying on the war.

Mr. MILLER. Pardon me, we did not take the property of an alien who was residing in the United

States during the war unless he was a dangerous alien and interned. There were thousands of Germans and Austrians and Hungarians who were here during the war and went on about their business unmolested.

Mr. SANDERS. Although we had a right to take all the property.

Mr. MILLER. Yes; but the trading with the enemy act exempted them.

Mr. SANDERS. I am talking about the right under international law. Of course, our specific right to take it depended upon our statutes.

Mr. MILLER. A government has a right, if it wants to, to do a lot of things during a war. In answering your question, I do not want to commit myself to the doctrine, but a government can do pretty much as it pleases about anything during a war. There is nobody to stop them unless the other party is stronger.

Mr. SANDERS. I presume it is the purpose of the department in any legislation it recommends to deal just as fairly and just as liberally with the aliens whose property we hold as our own citizens' rights will justify; is not that true?

Mr. MILLER. Yes, sir.

Mr. SANDERS. And that is what you are trying to do?

Mr. MILLER. Yes, sir.

Mr. HAWES. Mr. Miller, returning to the questions of Mr. Newton a while ago, these claims about which a dispute has arisen as to the relative value of the mark and the dollar, are largely a result of deposits in German banks by American banks prior to our entrance into the war. They are bank claims for bank deposits?

Mr. MILLER. Bank balances in favor of the American banks at the time war was declared.

Mr. HAWES. And the American banks had ap-

proximately an equal amount of German money which they held and are now holding and have never even turned over to the Alien Property Custodian.

Mr. MILLER. Oh, yes; if any bank has not turned over the alien property to us, they have violated the trading with the enemy act.

Mr. HAWES. But they still have on deposit those sums in the nature of liens.

Mr. MILLER. No, sir. We issue a demand for those funds, and if they were cash we put them in the United States Treasury, and that is where they are now. If they were securities, we either liquidated them and put the money into the Treasury or else they are being held.

Mr. HAWES. Did the Guaranty Trust Co. of New York turn over its balances?

Mr. MILLER. I am not prepared and I can not discuss in detail any one particular trust, Mr. Hawes. I would like to.

Mr. HAWES. As a matter of fact, it is the balancing of these claims of American money in German banks when the war broke out against German money in American banks when the war broke out, and the dispute is as to the fall of the mark and the matter of payment.

Mr. MILLER. Yes; but when we take into consideration what the German banks had over here in American banks we take into consideration that amount at the full value of the dollar.

Mr. HAWES. Absolutely.

Mr. MILLER. And I also want you to know that some of these liquid assets being offered back to Americans were also the private property of American citizens.

Mr. HAWES. Very few.

Mr. MILLER. I know that. I will tell you my own

experience. There is the friendliest feeling between the American and German bankers on this question.

Mr. HAWES. Absolutely.

Mr. MILLER. It is just a matter of decision and how the exchange is to be brought about now.

Mr. HAWES. So that the great proportion of the civilian claims do not consist of a series of small claims requiring the protection of American citizens, but it is an adjustment of balances between banking institutions of this country and banking institutions of Germany.

Mr. MILLER. No; I do not say, Mr. Hawes, that the majority of these claims held against Germany are of that character. That is the character of claims growing out of the alien property seizure in Germany. The great bulk of the American claims against Germany are for loss of life and property in sinkings at sea before the United States entered the war.

Mr. HAWES. Germany has never attempted to make payment of those claims for loss of life and property with the depreciated mark because they never have been adjusted.

Mr. MILLER. No; they have never been adjusted and no consideration has been offered.

Mr. HAWES. And it is a matter of determining the amount of these claims and that is the thing that is blocking settlement now—arriving at a decision as to the amount of the damages.

Mr. MILLER. If we knew to-day how much the claims would amount to when adjudicated, and barring the retention clause in the Knox-Porter peace resolution, we are prepared to give back, in accordance with the terms of that resolution, much more property.

Mr. LEA. Mr. Miller, can you tell us the approximate amount of property of American citizens seized by Germany which was converted into money?

Mr. MILLER. I have before me the report of the

German alien property custodian for 1921, in which it is shown that the total value of property taken under the administration of the alien property custodian of Germany amounted to 453,178,630 marks. That is, in round numbers, a little over $100,000,000 when you consider gold marks.

Mr. LEA. That is the valuation of the property. What I was getting at is how much of that was tangible property and how much in the form of money, and what, if any, amount was converted from tangible property into money, for which they now offer us marks.

Mr. MILLER. Why can I not insert here Appendix I of this report? It is a rather full detailed report of the various classifications of property. I notice, "Cash accounts, in banks, 149,000,000 marks."

Mr. LEA. That would leave property valued at approximately 250,000,000 in marks that was evidently tangible property.

Mr. MILLER. Taking roughly the valuation of 4 marks to the dollar, that would be $39,000,000 in cash accounts in banks.

Mr. LEA. What I was really trying to get at was what amount, if any, of American property was converted from tangible property into money and for which they now offer us marks.

Mr. MILLER. I can not tell you, sir; but if you want me to endeavor to find out from this report, I will do so and try to get it in the record.

Mr. LEA. I would like to know if that information can be conveniently supplied.

The CHAIRMAN. You will file that information with the clerk of the committee.

Mr. LEA. I would like to ask another question in reference to the circumstances that would justify us in abrogating a treaty under the terms of this original treaty with Prussia. Is there not a distinction be-

tween war as being a cause to justify the abrogation of a treaty and acts of the enemy in the war? For instance, under the terms of this treaty the mere fact of a war does not justify us in violating its terms. But a treaty is only a contract which is mutual, and when we enter into a war, assuming that the war itself did not abrogate the treaty, if the enemy country violates the terms of the treaty, which are mutual, why have they any right to insist upon our complying with the terms which they have violated?

Mr. MILLER. That is a perfectly good argument. The Congress or any legislative assembly can abrogate the terms of a treaty, whether there is war or not war, by subsequent legislation. Of course, if that is between two countries and Congress abrogates the treaty by legislation, there is likely to be trouble which may grow into a war. Take the Spanish-American war—that was a "gentlemen's" war, so to speak, where very little was done by either side outside the so-called rules of civilized warfare. In this war everybody got mixed up in the conflagration, and there were things done in this war that were never thought of when these treaties were negotiated.

Mr. LEA. Yes. In other words, the point I was trying to make is that war itself might not justify the abrogation of a treaty, but the violation of the specific terms of the treaty would justify the abrogation of the treaty.

Mr. MILLER. Suppose we had gone to war with Germany and there had been no trading with the enemy act and we had a gentlemen's war, so called, as we had with Spain, then this situation would have arisen, but the Congress did see fit in this war with Germany to pass a trading with the enemy act which superseded the treaty. I am informed that Germany did take over bank accounts in Germany before the trading with the enemy act in this country was passed.

Mr. NEWTON. As I gathered from your statement just a moment ago, with reference to a question from Mr. Lea, there was something like $140,000,000 worth of marks.

Mr. MILLER. The total value of property taken under the German alien property custodian was 453,117,630 marks, which, on the gold basis, is around $100,000,000.

Mr. NEWTON. There was about 140,000,000 marks that was cash seized or property that was thereupon immediately converted into cash.

Mr. MILLER. Yes

Mr. NEWTON. That is correct.

Mr. MILLER. Yes; according to this report.

Mr. NEWTON. So that would mean approximately 140,000,000 marks in American valuation at the time of seizure, or $40,000,000.

Mr. MILLER. About that.

Mr. NEWTON. The American claimants now want, of course, that $40,000,000 paid back to them, and the German Government proposes to pay it back in marks at a value of one-third of one cent.

Mr. MILLER. It had been offered to them.

Mr. NEWTON. That was their proposal. That is the way they propose to settle. So that we have the American claimants requesting what was taken, $40,000,000, and we have the German Government proposing to pay on the basis of one-third of one cent as a settlement.

Mr. MERRITT. Yes.

Mr. NEWTON. The difference then is the difference between $40,000,000 and $133,000.

Mr. MILLER. That is putting it in figures; yes, sir, and I understand that this class of American claims are the ones that are going to receive the first consideration.

Mr. NEWTON. I do not know that I understand you about that.

Mr. MILLER. Our Government wants to see that particular class of claims cleared up first, if possible—the ones we have just been discussing.

Mr. NEWTON. That is, by the German Government.

Mr. MILLER. Yes, sir.

Mr. NEWTON. They want to have them cleared up first?

Mr. MILLER. Yes; this cash of Americans for which is now being offered the depreciated value of the mark.

Mr. NEWTON. And it is that proposition put forth in that way that accounts for the proposal upon the part of the executive branch of our Government to retain in part this trust fund and retard its payment so as to insure to the Americans payment of what was taken away from them and not have them paid back $133,000 for $40,000,000.

Mr. MILLER. That was one of the purposes of the retention clause in the peace resolution, and one of the reasons why, bearing those instructions in mind, I am not recommending that a larger amount be returned at this time.

Mr. HAWES. Just as a matter of history, our trading with the enemy act was passed in this country prior to similar action being taken in Germany, was it not?

Mr. MILLER. I understand, Mr. Hawes, that Germany took over some American property prior to the passage of our trading with the enemy act. Our trading with the enemy act was based on the trading with the enemy act of Great Britain and France, and all nations then at war or all nations at war when we entered the war had trading with the enemy acts except Austria-Hungary.

Mr. HAWES. But we did pass our act before any enemy property was taken over by the Germans except possibly some industrial plants.

Mr. MILLER. American property in Germany had been taken over prior to the passage of our trading with the enemy act. As to whether all of it was taken over, I am not prepared to say.

Mr. WEBSTER. Colonel Miller, following Mr. Newton's idea expressed a moment ago, that same disparity would exist as to all property now held by the Government custodian unless it was returned to its American owner in kind?

Mr. MILLER. Yes, sir; if it had ever been liquidated.

The CHAIRMAN. Colonel Miller, there appears to be nothing further. We are obliged to you for your testimony and will excuse you subject to call, if necessary.

Mr. MILLER. Thank you, sir.

(The committee thereupon adjourned until Wednesday, January 3, 1923, at 10 o'clock a. m.)

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Mr. HOCH. May I ask whether there will be a witness here who is familiar with the negotiations as to the compensation paid to the Alien Property Custodian by the Navy Department for the license?

The CHAIRMAN. Nobody has been arranged for except such witness as they saw fit to send here, who is Mr. Neagle, but perhaps we can get the information, if you want it.

Mr. NEAGLE. I can probably give you a partial answer to that question. The negotiations on the part of the Navy Department were carried on by Commander Norton, who has since died, and I do not know that any record was made of it, so that it is very likely

that so far as the Navy Department is concerned it is not practicable to get that information.

The CHAIRMAN. Perhaps the Alien Property Custodian might, at a later time, furnish that.

Mr. MILLER. Just at that point, Mr. Chairman, it might be interesting for me to say to the committee that as the common law trustee for the enemy interests in all this property I have, since I took over the office, contemplated bringing a friendly action in the courts, as trustee for these people, to determine whether the compensation of $100,000 and other considerations paid for these patents, was really a sufficient sum of money, but due to the whole patent situation I have not done so. To my mind it would be found that the compensation paid at the time was inadequate, but we must bear in mind that at that time we were at war and were seizing everything we had within our power to make war with, and I am considering this proposition on the assumption we are trying to clear up this matter on a peace-time basis.

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Mr. MERRITT. Do you know—and perhaps the Alien Property Custodian can tell me if you do not—whether each patent has a trust number?

Mr. MILLER. Yes, sir; each piece of property seized from an individual or a corporation is given a separate trust number in the office.

Mr. MERRITT. And you consider each patent a special piece of property?

Mr. MILLER. I consider each patent or group of patents seized from an individual or corporation as a separate piece of property, and it is given a separate trust number.

Mr. MERRITT. But not a special valuation?

Mr. MILLER. No, sir; they are carried on our books, generally speaking, at $1; and right at that

point, if I may be permitted, that is the great difficulty in considering this situation in reference to the $10,000 return proposition, namely, if you pass the $10,000 return proposition, how are you going to differentiate between the owners of all those patents that were sold, in one case to the Navy Department for $100,000, and in another case to the Chemical Foundation for $250,000?

Mr. MERRITT. Aside from any special legislation, then, you would feel at liberty to return any one patent under this $10,000 limitation because it is only valued at $1?

Mr. MILLER. Yes, sir; unless I had legislative instructions to the contrary, in your proposed act.

Mr. HAWES. You could not release under this bill any patents that exceeded $10,000 in value, if this bill was passed in its present form?

Mr. MILLER. I could, if you passed a further provision that those trusts of the value of $10,000 and over can have returned to them an amount equal to $10,000.

Mr. HAWES. So that if a patentee had a patent and wanted it released, he would have to fix a fictitious value of $10,000 upon it, or he could not have it released under this bill.

Mr. MILLER. It would entail a great amount of trouble and perhaps the retention of patent attorneys, in some cases, to appraise and determine the value of a patent, and while I do not want to intrude on the committee, if I may while you are questioning me along that line, I should just like to illustrate that briefly. The patents that were sold to the Chemical Foundation for $250,000 and the patents which the Navy Department took over constitute practically two-thirds of the patents seized by the Alien Property Custodian. If you pass this proposed legislation, I should think the office would have to have some legislative instruc-

tions because you have seen to-day the situation with regard to the Navy Department, and you also know that the Chemical Foundation patents are tied up in a suit; there are approximately 33 per cent of the remaining patents seized by the Alien Property Custodian which are not tied up in either of those ways and which could rightfully come under the provisions of any return bill which you passed, without any specific legislative provision. Do you see the point?

Mr. HAWES. I got it, but in the matter of patents, the owner of a patent in order to secure the benefit of this law would be compelled to accept a valuation of $10,000 in order to have it released.

Mr. MILLER. No, sir. If, without any restricting clause, the owner of a patent applied for the return of that patent, which is property, I would have to determine, unless I was instructed to the contrary in legislation, whether this patent was $10,000 or above $10,000. If it was above $10,000 I would have to sell it or liquidate it and give him $10,000 and keep the remainder; or if I found that it was under $10,000 in valuation I would return it to him in whole.

Mr. HAWES. So you would have to convert yourself into a Court of Claims and a Patent Office in order to determine any one of these questions.

Mr. MILLER. I very much fear, unless you have some specific legislation in here, it would cause great difficulty when we come to considering claims for the return of patent property.

Mr. MAPES. I hate to prolong the hearing, but I would like to ask Colonel Miller one more question. A patent being a more or less intangible sort of thing, what difference would it make either to the Government or to the patentee, if it was turned back to him and he gave you a receipt that would clear the Government?

Mr. MILLER. Yes, it would; but let us suppose a

man whose patent is tied up in this Chemical Foundation suit comes to our office and says, "I want my patent back." We can not give him his property back because it has been sold and we can not differentiate as to how much of that $250,000 each one of these 4,500 patentees are to receive.

Mr. MAPES. I can see how that would apply to those patents which have been taken over by the Chemical Foundation.

Mr. MILLER. And also, Mr. Mapes, to the patents that we sold outright to the Navy Department. The same question of a division would ensue.

Mr. MAPES. But that would not apply to those which you hold exclusively, would it?

Mr. MILLER. I would very much like to divorce ourselves of them as soon as possible.

Mr. SWEET. Mr. Miller, with reference to the 33 per cent you now have that have not been sold or transferred in any way, it would be necessary to value them if we put a restricting clause in the act providing for returning property simply to the extent of $10,000.

Mr. MILLER. It would, in a way, sir, but I submit that this 33 per cent, broadly speaking, that we still retain outright, are probably those patents that are of very little, if any value.

Mr. DENISON. Has the Alien Property Custodian been bothered with any infringements of any of these patents while in your possession? Have any infringements been called to your attention; and if so, have you been called upon to prosecute any such cases?

Mr. MILLER. There have been a few cases lately, Mr. Denison, where people who licensed patents from us are in infringement suits, and they are endeavoring to make me a party to those suits, and I have so far adopted the policy of not becoming a party on

the part of the Government to any individual litigation of that character.

Mr. DENISON. Is it your duty under the law to watch these patents and see if they are infringed by anybody else?

Mr. MILLER. Yes, sir; I consider it my duty and am now contemplating a suit to defend a copyright that we have seized from an enemy and which we hold and which I think is being infringed upon by some Americans.

The CHAIRMAN. When this hearing adjourns, as it will shortly, it will be for the purpose of reassembling at 10 o'clock to-morrow morning. I think unless some of the committee object, we will consider the hearing on this bill as at an end for to-day. In the meanwhile, before adjourning, the Chair would like to ask all persons present to remain after the adjournment for consultation with the chairman for the purpose of making a matter of record their desire to have their presence indicated and an arrangement made for their appearance.

Mr. MILLER. May I say in that connection, Mr. Chairman, that I must go to Wilmington, Del., to-morrow, in connection with the Government's suit against the Chemical Foundation, and while I must be absent, unless you have some intention of calling me——

The CHAIRMAN. If any points arise we can make note of them and take them up with you later.

Mr. HUDDLESTON. May I ask Colonel Miller at this juncture, when do you think it possible that that suit will be disposed of?

Mr. MILLER. I think, Mr. Huddleston, that question can be answered to-morrow afternoon, after consultation between the Government's representatives, the defendant's representatives, and the district judge in that jurisdiction.

The CHAIRMAN. We will call the hearing now adjourned until to-morrow at 10 o'clock a. m.

(The committee thereupon adjourned until Friday, January 5, 1923, at 10 o'clock a. m.)

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ADDITIONAL STATEMENT OF HON. THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN.

Mr. MILLER. Mr. Chairman and members of the committee: I saw the American claims agent of the Mixed Claims Commission, Robert C. Morris, this morning, anticipating I might be asked some questions about the present status of this matter. I was told that when the Mixed Claims Commission took over this work the last of September, there were 4,000 claims on file in the State Department. Within the past week, 4,200 claims have been filed with the commission, making a total, up to last night, of between 8,200 and 9,000 claims. Because of the obvious difficulty in compiling this information quickly without going over each claim, I was told that it would be some weeks before the claims agent, Mr. Morris, would know the approximate number of claims, the classification of them, and the amount claimed.

The 4,000 claims which the Mixed Claims Commission took over from the State Department, according to Senate Document 419 of the Sixty-sixth Congress, totaled about $500,000,000.

The reason that the time was extended to January 15 was due to the fact that a clause had been inserted in the arrangement between Ambassador Houghton, at Berlin, and former Chancellor Wirth, of the then German Government, to the effect that 60 days after the signing of the agreement, which was in August, all claims would be considered filed and no more would be received, but the 60 days has been con-

strued to run from the time when the commission actually got down to business—namely, on or about the middle of November.

The claims commission itself is an agency of the State Department and the money out of which they are operating is in the emergency appropriation of the State Department, and Robert C. Morris, the claims agent, is in the position of the solicitor for the American claimants. After he and his office have passed on the claims they forward them to the American representative, Judge Parker, and the German representative, Doctor Kisselbach, and then if they do not agree on an award it is passed on to former Justice Day, as the umpire.

I did not want to intrude, but I thought that statement might well follow Mr. Betts's statement, because it is the last information that I was able to get of any authentic nature this morning.

Mr. SWEET. These claims are to be filed before this Mixed Claims Commission rather than before the State Department.

Mr. MILLER. Yes, sir.

Mr. LEA. Are all these claims American claims, or are part of them German claims?

Mr. MILLER. All these claims are the claims of American citizens against the German Government. The question of whatever claims there may or may not be against the Austrian Government, or the Hungarian Government, is not within the jurisdiction of the present Mixed Claims Commission unless a further arrangement is made with Austria and Hungary.

With reference to the statement about the former Solicitor of the State Department, and I presume you refer to Mr. Nielsen——

(Mr. Betts had been referring to Mr. Morgan and misunderstood Mr. Miller when he mentioned Mr. Neilsen.)

Mr. BETTS. Yes.

Mr. MILLER. The statement that Mr. Neilsen is involved in this matter is a little bit erroneous. Mr. Nielsen is acting for the American claimants against the British Government. He is not involved in any way with the claims of American citizens against the German Government. Mr. Robert C. Morris and his organization are the ones that handle the claims against Germany and none other.

Mr. MAPES. It is true, is it not, that these claims do not in any way involve the property which you have?

Mr. MILLER. There is no connection other than what the Knox-Porter peace resolution says and whatever legislation the Congress enacts.

Mr. MAPES. The beneficiaries of the funds which you have do not have to go before the Mixed Claims Commission to protect their rights at all?

Mr. MILLER. No, sir; they present their claims to my office under section 9.

Mr. MAPES. And the claimants who have already filed their claims at the State Department are not obliged to refile them with this Mixed Claims Commission in order to protect their rights?

Mr. MILLER. No, sir; they were simply transferred over to the Mixed Claims Commission, which was given jurisdiction under the agreement.

Mr. SANDERS. How long a document is that agreement?

Mr. BETTS. I was just going to say that it is only two or three pages, and I could read it very easily.

Mr. SANDERS. I think we would save time if that was read.

Mr. MILLER. By intruding here I do not desire to be placed in the position of touching upon the prerogatives of the Department of State or the Mixed

Claims Commission, and if that is all you want to ask me, I beg to be excused.

Mr. DENISON. I would like to ask you one question. Before what tribunal are these claims against Great Britain, which you say Mr. Nielsen has charge of.

Mr. MILLER. That is merely an arrangement between the State Department and the British Foreign Office, and I did not know about that situation until I made inquiry as to what Mr. Nielsen was doing, and learned for the first time that he was not with the German-American Mixed Claims Commission. They are claims of Americans against the British Government for a number of acts growing out of the war.

Mr. DENISON. They are before the State Department.

Mr. MILLER. Yes, sir.

* * * * * * * *

STATEMENT OF HON. THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN.

Mr. MILLER. I can sum up in a brief statement this situation so far as the Alien Property Custodian's office sees the matter. In 1906 there was a great fire in San Francisco. I, too, was present there within a fortnight thereafter. Of course, there were insurance companies all over the world, as well as domestic insurance companies, which had underwritten insurance in San Francisco. It seems, according to my personal investigation, when I was in San Francisco a year ago, that all of these domestic and foreign companies settled their claims in full and in a manner satisfactory to the people who had insured with them, with the exception of three insurance companies, the Aachen & Munich Fire Insurance Co., the Hamburg-Bremen Fire Insurance Co., and the Prussian National Insurance Co.

These three companies, against the advice of their local agents in San Francisco, who were naturalized German-Americans, proceeded in a way highly unsatisfactory to the claimants. There were some 2,000 claimants who, through various means, were induced to take or accept settlements far below what their premiums called for. Be it said to the credit of other German insurance companies, British insurance companies, Bulgarian insurance companies, Swiss insurance companies, and domestic companies, that they settled their claims in a manner satisfactory to the people who were insured with them.

I found that the two thousand and odd claimants, many of whom were poor people, did everything they could, collectively and individually, to bring these three insurance companies to time. It is obviously impossible for people of small means, unless they go to great expense or band themselves together, to protect themselves. It is a long road that has no turning. Some years later, after you passed the trading with the enemy act, your Alien Property Custodian's office, found itself in possession of all of the assets of these three companies within the United States. They are three of the 23 enemy insurance companies which we are operating and liquidating to-day. I am going to insert in the record the assets of these three insurance companies as of to-day, or as of November 30, 1922, and the estimated amount of claims filed with my office for the San Francisco fire losses.

(The statement referred to follows:)

San Francisco fire claims.

Aachen & Munich Fire Insurance Co.:		
Assets Nov. 30, 1922	$2,047,002.80	
Liabilities	None.	
November interest	177.27	
Total assets		$2,047,180.07

Estimated amount due on San Francisco fire claim.	$400,000.00	
Indebtedness		$400,000.00
Balance		1,647,180.07
Hamburg-Bremen Fire Insurance Co.:		
Assets Nov. 30, 1922	833,282.75	
Liabilities	None.	
Total assets		833,282.75
Estimated amount due on San Francisco Fire claim.	500,000.00	
Indebtedness		500,000.00
Balance		333,282.75
Prussian National Insurance Co.:		
Assets Nov. 30, 1922	1,552,272.91	
Liabilities	None.	
Total assets		1,552,272.91
Estimated amount due on San Francisco fire claim.	200,000.00	
Indebtedness Nov. 30, 1922		200,000.00
Balance		1,352,272.91

RECAPITULATION.

Total assets of three companies held by the custodian Nov. 30, 1922	$4,432,735.73
Amount of basic claims against combined companies	1,100,000.00

Mr. MILLER. Briefly stated, the claims total $1,100,000 as filed with my office, and the total assets are $4,300,000 to-day.

This proposition was originally brought to the attention of your committee and my office by bills introduced by Congressman Julius Kahn, of California, and Senator Hiram W. Johnson, of the same State.

They are the only types of what we might call individual claims that I felt impelled upon to come before your committee and recommend favorable consideration.

Under the law to-day, we can not, of course, entertain the claims of American citizens against these insurance funds. Neither can those American citizens present their claims to the Mixed Claims Commission, because that character of claim is not within the purview of the Mixed Claims Commission. As you have heard from the previous witness in his detailed statement, all that this proposed amendment is asking is that the claimant be permitted to have the statute of limitations waived and be permitted to present these claims in the usual course. That does not mean that if the statute of limitations is waived that these claims are necessarily going to be paid in whole or in part, but it permits the reopening of the situation before either the Alien Property Custodian or, if you would prefer it, before a court or other tribunal.

I am firmly of the opinion, in view of all the circumstances connected with this situation, that these 2,000 American citizens should be given an opportunity to plead their cases, and if they prove them receive remuneration.

In the files of the enemy insurance companies involved, of which we have possession, information rests which will enable me as the trustee representing them to defend these claims, if they are improper or excessive.

I have not been asked the question, but if I were, I would, in my individual, official capacity, oppose individual amendments to this act which would take

care of individual claims. You have heard a number of eminent attorneys on their particular clients, but I have no hesitancy in telling the committee, after reviewing this matter for the period of a year, that I would favor the general principles embodied in Congressman Kahn's proposition, and I have arrived at that conclusion after a personal investigation. As to the legal aspect of it, I think you have thoroughly examined the previous witness, although I have a similar brief to his, which I have gone over.

Congressman Kahn's bill is a very lengthy bill. If the proposition meets with the favor of your committee, the proper amendment to H. R. 13496 can be made by the inclusion of a few lines. Further than that, I have no more statement to make on this point unless the committee wants to examine me.

Mr. HAWES. Mr. Miller, I would like to ask you one question. These companies have issued insurance policies in the United States during recent years, have they not?

Mr. MILLER. Yes, sir; they were operating as agencies up until the time we took them over; that is, up until the time the war started in August, 1914.

Mr. HAWES. Do you know how much insurance had been issued in that way to the American public?

Mr. MILLER. I do not know, sir. I know that these enemy insurance companies we are operating were some of the largest agencies operating in this country and did a big insurance business.

Mr. HAWES. The thought I have in my mind is, if you would wipe out these assets by handing them over to these old claimants, would not that jeopardize the value of the insurance now carried in this country?

Mr. MILLER. No, sir; we are not writing insurance now, Mr. Hawes, in any of these companies. Our job now is that of liquidator, endeavoring to pay and settle the thousands of claims that were against those

companies for legitimate fire insurance losses when they ceased to do business because of the war. We would not wipe out any assets that would jeopardize other claims because the Aachen & Munich and the Hamburg-Bremen and the Prussian National are practically at that point of liquidation where the only unsettled claims are these California fire claims.

Mr. DENISON. They have no existing fire contracts outstanding?

Mr. MILLER. No, sir.

Mr. HUDDLESTON. Colonel Miller, under the existing law any creditor of the owner of any of this German property has the right to bring suit to establish his lien on the property?

Mr. MILLER. Yes.

Mr. HUDDLESTON. Or to collect his money?

Mr. MILLER. Yes.

Mr. HUDDLESTON. Have such suits been brought?

Mr. MILLER. No, sir; they have filed their claims.

Mr. HUDDLESTON. I mean, have any such suits been brought?

Mr. MILLER. No, sir.

Mr. HUDDLESTON. Not upon the part of these particular claimants, but others.

Mr. MILLER. Yes, sir; a number of debt claims have been filed with my office and a number of them are in suit right now.

Mr. HUDDLESTON. So that the claimants represented by Mr. Vogelsang could have filed their suits heretofore had they desired to do so.

Mr. MILLER. But if they had filed them against the funds in my office the statute of limitations would have barred them. But these other cases, Mr. Huddleston——

Mr. HUDDLESTON. Just a moment. You refer to the statute of limitations of the State of California?

Mr. MILLER. Yes, sir.

Mr. HUDDLESTON. What is the California statute to which you refer—what is the period of it?

Mr. MILLER. May I ask Mr. Vogelsang.

Mr. VOGELSANG. I have not that here.

Mr. GRAHAM. Mr. Lea may know that.

Mr. MILLER. My knowledge of this matter is to the effect that I had no way to consider these claims under the act I am administering.

Mr. HUDDLESTON. You did have a way, just the same as in the case of any other claims, unless the statute was influential with you.

Mr. MILLER. These other claims are debts that arose before the war started.

Mr. HUDDLESTON. You mean for fire losses?

Mr. MILLER. No; debts against this fund or any other fund in my office. I am authorized under the law to consider a debt claim that arose previous to the entry of the United States into the war. Of course, when we entered the war the statutes were not running. Debts that were contracted during the war, under the law, I have no right to allow because the people had no right to contract any debts against the property which we held.

Mr. HUDDLESTON. What you are saying, though has no reference to these California claims.

Mr. MILLER. But even when the war started, the statutes had run against the particular funds of these three companies.

Mr. HUDDLESTON. You do not know that as an official, do you? Has the matter been considered and have you decided they are barred by the statute?

Mr. MILLER. I have every reason to believe they have been because the people who have been to see me on the matter, and especially the attorneys who are local attorneys from California, and my office also has reported to me. If I did not make the examination myself, it was certainly made by

some of my subordinates, and it was stated that their suits were barred under the statute of limitations.

Mr. HUDDLESTON. They had the right, upon your adverse decision or upon the circumstances mentioned in the existing law, to resort to a court to test out their claims and to see whether or not the statute had barred them?

Mr. MILLER. Oh, yes; but as I understand it, before we entered the war they had already tried to recover in the courts of the United States, or of the several States, and had failed.

Mr. HUDDLESTON. Upon what ground, the statute of limitations?

Mr. VOGELSANG. I do not know that any of these claims that I have were ever in suit at all anywhere.

Mr. LEA. Mr. Chairman, under the California law a suit to recover on a contract such as an insurance policy would have to be filed within four years, and the statute of frauds would also operate in a period not more than four years. I have forgotten the exact time, but I know it is not more than four years.

Mr. VOGELSANG. I presume that you mean within that period after the discovery of the fraud.

Mr. LEA. After the discovery of the fraud; yes.

Mr. VOGELSANG. So that if it is four years, it would be very uncertain——

Mr. HUDDLESTON (interposing). Let me proceed further with my examination. You gentlemen are discussing something I have not asked about.

These California claimants had the right under existing law to resort to the courts to decide whether they had a good cause of action or whether it was barred by the statute of limitations.

Mr. MILLER. And it is my understanding——

Mr. HUDDLESTON (interposing). Is not that the fact?

Mr. MILLER. Yes; and it is my understanding they did so. I frankly state that I have not that information here to-day in detail. I thought the attorney representing them would have it, but my general investigation showed me that they had exhausted every means within their power long previous to the time we entered the war.

Mr. HUDDLESTON. The particular right or claim which they seek to assert is the right to set aside the contract of settlement.

Mr. MILLER. Some of them——

Mr. HUDDLESTON (interposing). That is the nature of their proceeding, and to obtain incidental relief therefrom, which is to collect their debt. What they are seeking to set aside is a contract procured by fraud. Their right to take that action dates from the discovery of the fraud or when by the exercise of reasonable diligence they might have discovered it. That is a common principle of law. So that in view of the statement that has been made, that they did not discover this fraud until this property was seized by the Alien Property Custodian, the courts have been open to them ever since that time in which to set up that right, have they not?

Mr. MILLER. Yes; they have.

Mr. HUDDLESTON. They have not done so, however.

Mr. MILLER. Yes; they have, Mr. Huddleston.

Mr. HUDDLESTON. Since the Alien Property Custodian took this property they have not gone into the courts, as provided by the trading with the enemy act.

Mr. MILLER. No; they have not.

Mr. HUDDLESTON. That is all.

The CHAIRMAN. If there are no further questions, we are obliged to you, Mr. Miller.

Mr. Newton, we will now hear you.

* * * * * * * *

ADDITIONAL STATEMENT OF MR. THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN.

Mr. MILLER. Mr. Chairman and members of the committee, as the head of the department initiating this legislation through this committee, we stand on the testimony and facts given here to you on the first two days of the hearings last month.

Yesterday I was before a subcommittee of the Senate Committee on the Judiciary, presided over by Senator Cummins, and was heard on a bill similar to the one that you are considering here. No one will deny the fact that in the few remaining weeks of this Congress it is going to be exceedingly difficult to bring together the ideas of the House and Senate and individual Members on this legislation.

I am not going to rehearse the two angles that I discussed in detail at the beginning. I can only reiterate that I think it is only fair and just that your committee should launch on its way in the very near future legislation embodying the ideas proposed in the bill that you are considering. From the queries in the Senate yesterday there will probably have to be serious questions and differences thrashed out between the conferees if the bill ever reaches that stage.

We have a few suggested amendments in my office, which I am not going to burden you with here to-day, because I will be at your instant call should you be in executive session and grant me the privilege of making any concrete legislative suggestion on one or two points that have been brought up.

We rest our case on the grounds that I have just given you, and on our initial testimony which opened these hearings. I feel that the committee before whom we are appearing is eminently qualified to decide this question between them. They certainly know more about this intricate problem than any other set of men in Congress, and it is a problem that can not be

considered offhand and discussed intelligently by the average Member on the floor of the House or Senate, unless he has either attended the hearings or has taken pains to read the testimony that has been presented to you. I say that with no reflection upon the other Members, but this is the most intricate problem, that you have growing out of war-time legislation, and unless you take some step in the right direction in this Congress, it is going to be several years, I fear, before these intricate problems are cleared up.

I rest my case on those statements.

The CHAIRMAN. Gentlemen, we will consider the hearing ended as of to-day. I will say that there are some phases of this matter which members of the committee have asked to have considered at one time or another, and it will probably be very desirable that we should hear more witnesses. Now the query is when the committee would choose to have a session. We want to expedite this just as much as we can.

Mr. GRAHAM. Mr. Chairman, is the hearing finished?

The CHAIRMAN. The hearing for this morning is finished.

Mr. GRAHAM. I think we ought to get at this just as soon as we can, but I believe we ought to have the hearings printed before we go to considering the bill for amendments.

The CHAIRMAN. Quite so. We are not talking about that at all yet. The printing of the testimony has been held back, due to the fact that some members of the committee have not yet made whatever corrections they may care to, and the only thing we can do is to hereafter disregard them if they do not get around in reasonable time, and that is not desirable.

By the way, Colonel Miller, you are going out of

town. Will you authorize the chairman to make corrections in your morning testimony?

Mr. MILLER. Yes, sir.

The CHAIRMAN. I will accept it under those circumstances.

Mr. NEWTON of Minnesota. It seems to me, Mr. Chairman, there are some little matters that possibly we can not take up here in open session, but I am wondering if some of those matters can be considered to-morrow morning.

The CHAIRMAN. The Chairman was leading up to a conclusion by the committee as to when they wanted to sit again. They have had four days solid now this week. To-morrow will help by so much. Monday would be two days later. Now if it is agreeable to the committee we will sit to-morrow and have witnesses here whom I am sure the committee wants to hear. So if there is no objection we will adjourn the hearing until 10 o'clock to-morrow morning.

(Whereupon, at 12.50 o'clock p. m. the committee adjourned until 10 o'clock a. m., Saturday, January 13, 1923.)

DEFENDANT'S EXHIBIT No. 168.

Office of
HERMAN A. METZ,
122 Hudson Street,
New York.

June 11th, 1918.

Dr. Julius Stieglitz,
University of Chicago,
Chicago, Ill.

My dear Dr. Stieglitz:

Colonel Vedder and Dr. Lake were here today and spent most of the day with me at the Laboratory.

It turned out that practically all the stuff complained of, and that caused trouble, as well as the lots which the Rockefeller Institute made the tests with, were among the batches we first turned out which were passed on the then existing standard of 50 mgms. All those passed at 60 mgms. as a standard, and many of the recent lots which not only passed 60 mgms. but which Dr. Lake found would pass at 70 and Professor Gies at 80 mgms., were not used in these tests or these complaints at all.

We believe at the Laboratory that we have located the trouble. The use of the darker Nitro Amino product which we obtained in the beginning and which we have been gradually improving and purifying until now we have the very light product used in the recent batches, seems to have caused the trouble and seems to solve our problem. At any rate Professor Gies is now starting to test these recent batches at 80 mgms. and Dr. Lake will start them all at from 70 to 80 mgms. immediately. In going over our records, apparently there is a relationship between the batches complained of and the dark Nitro Amino batches which were being used at that time.

I am very much pleased by the exchange of opinions so far had and if what we now believe to be so is carried out by comparative tests made with the newer product, we will probably have our product entirely satisfactory as to toxicity and still retain its solubility without any further changing. I shall, of course, keep you closely informed.

It might be a very simple matter to get the exact status if we could send Dr. Raizies one to five pounds of our Nitro Amino and let him reduce it and precipitate it by his process and we take one to five pounds of his Nitro Amino and reduce and precipitate it by our process. The respective results obtained would easily prove whether the trouble is in the Nitro Amino or in

the reducing and precipitating, and this result could be arrived at within a very few days if Dr. Schamberg will let us have his product and let us send him ours.

I hope you got home safely. With kind regards,

Yours very truly,

(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 169.

Office of
HERMAN A. METZ,
122 Hudson Street,
New York.

June 21st, 1918.

Dr. Julius Stieglitz,
University of Chicago,
Chicago, Ill.

My dear Dr. Stieglitz:

I assume you have heard from the Hygienic Laboratory the results of their tests of lots I-90 to I-97. These were all tested at from 70 to 90 mgms. and all passed above 80. Two passed at 90 and I-93 would have probably passed at 100. These tests bear out those by Professor Gies.

I enclose copy of a further report received from my brother today which, no doubt, will prove of interest.

With kindest regards,

Yours very truly,

(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 169-A.

H. A. METZ LABORATORIES, INC.,
Medicinal and Pharmaceutical Preparations,
122 Hudson Street,
New York, N. Y.

June 20, 1918.

Mr. Herman A. Metz,
122 Hudson Street,
New York, N. Y.

My dear Herman:

We have very carefully gone over all of our Salvarsan manufacturing records and compared them with the record of complaints and from the information thus obtained it seems that the trouble with some of our earlier batches was in all probality due to varying raw materials, especially differences in solubility and stability of Hydrosulphite. The exact reasons for this, however, we have not as yet been able to definitely determine. In connection with this investigation we are endeavoring to obtain from physicians who have complained of reactions, complete data in regard to control numbers of lots, the preparation of the solution, preparation and condition of the patients and technique. Far more valuable, of course, would be a record of such information from the various army cantonments, where the great bulk of our product has gone, and we believe it would aid our work very materially if such records could be made available to us by Dr. McCoy. We have laid out a plan of rearranging and compiling of such data from which we will undoubtedly learn much that will tend to show the causes of most reactions.

Biological tests made by the Hygienic Laboratories at Washington and by Professor Gies indicate, that

our recent batches, with the possible exception of one, pass a much higher standard than that set by the Government up to the present time. This fact is in line with mechanical improvements we have made in our equipment which tend materially to shorten the time required in manufacturing.

Our chemical investigation is progressing along the lines originally laid out. We also proposed to isolate various by-products and decomposition products with a view of determining their relative toxicity and to what extent they may tend to increase the toxicity of Salvarsan.

In regard to the possibility of our Nitro-oxy-arsinic acid containing a certain amount of di-nitro compound, we have prepared pure 3, 5 di-nitro-osy-phenyl arsinic acid and investigated its properties, but cannot find that this product appears as an impurity in our 3-mono-nitro-oxy-phenyl-arsinic acid as used in making our reductions. We believe that our entire method of manufacture is correct in principle, and that with some slight modifications, we shall be able to make a final product (Arsphenamine) at least as good as any on the market. We feel confident that we can produce these results and are by no means averse to having the standard raised up to whatever limit the Public Service may deem it advisable.

Yours truly,

(Sgd.) G. P. METZ.

DEFENDANT'S EXHIBIT No. 170.

Office of

HERMAN A. METZ

122 Hudson Street

New York

June 24th, 1918.

Dr. Julius Stieglitz,

University of Chicago.

Chicago, Ill.

My dear Dr. Stieglitz:

I have your favor of the 22nd and note that Dr. Schamberg says he cannot accede to our suggestion regarding the reduction of his and our product.

As a matter of business, I have no doubt Dr. Schamberg is justified in this stand, but considering the fact that he has disclaimed all business interests in the proposition and is taking up the entire question from the humanitarian standpoint only, I am rather disappointed at his decision. However, in view of the progress we have already made, and I am sure we will continue to make, I believe we can solve the problem alone without any trouble.

I certainly thank you for your efforts and endeavors in this matter.

Yours very truly,

(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 171.

H. A. METZ LABORATORIES, INC.
Medicinal and Pharmaceutical Preparations
122 Hudson Street
New York, N. Y.

August 20, 1918.

Dr. Julius Stieglitz,
University of Chicago,
Chicago, Ill.

My dear Dr. Stieglitz:

I have both your letters of the 15th. Thanks for forwarding the one to Surgeon-General Gorgas which was enclosed in your letter by mistake.

It will interest you to know that our new and enlarged Novocain plant is now installed and working. We will have from 100 to 120 pounds of Novocain a week, ready for distribution from this time on.

In our last batches of Salvarsan we have turned out 7500 ampules of 0.6 in each operation with perfect success. We can, as soon as the enlarged plant at Newark for Arsenilic Acid is going full swing, do this every day and with the new building that is just being completed where the old shed stood, in which I am going to do the distilling of Ether, and to which the Salvarsan precipitating room will be moved, I will be able to double this output by the addition of one more precipitating tank, if it becomes necessary.

I also appreciate what you say regarding the cooperation which we may render to each other. I certainly am anxious to do all I can to place at the disposal of the Public Health Service all the information I can, and do what I can to improve the quality of Arsphenamine and further the studies of its chemical and clinical properties but you must agree with me, and undoubtedly do, that through giving such assistance to the Public Health Service, the information so

conveyed should not be used for the benefit of my competitors and to my own disadvantage. This entire proposition of manufacturing Novocain and Salvarsan especially has been a very costly and expensive one and it will be a long time, at the price at which I have been holding it for the public good, before I will have a return upon my investment let alone a profit, but I feel that we are now in a position to take care of the requirements, not only of the Army and Navy, but the country at large, and have a good deal for export so that the encouragement of competition under these circumstances at my expense and my disadvantage, would be far from fair.

With kindest regards,

Yours very truly,

(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 172.

August 22, 1918,

Mr. H. A. Metz,
122 Hudson Street,
New York, N. Y.

Dear Mr. Metz:

I have your letter of August 20, and am glad to hear that you are doing so well with propane and arsphenamine.

Dr. McCoy expects to be in the city in a few days, and I shall take up in a conference with him the question of our further plans. I think it should be understood that any information obtained from you should not be used for the benefit of your competitors and to your disadvantage—certainly not without the formal contract covering any such relations.

With best regards, I am

Yours sincerely,

(Sgd.) JULIUS STIEGLITZ.

JS/ES

DEFENDANT'S EXHIBIT No. 173.

Chicago, Ill.
January 3, 1919.

Mr. Herman Metz,
122 Hudson St., New York.
Dear Mr. Metz:

With the introduction of the Takamine product on the market there is every probability that the standard of purity for Arsphenamine will have to be raised within a short time and I believe that we will have every reason to raise it to 120 mg. Your process is the longest and leads to the least pure product, in my judgment. You have more inter-mediates than any other manufacturer and this, of course, increases the expense most decidedly and also seems to increase the difficulty of securing a finally pure product. This conclusion is not only based on the experience with your product, but it is also based on the work done both with your materials and with your process from beginning to end under my direction here. The conclusion also agrees with the conclusion reached in the Chemical Laboratories of the Massachusetts State Board of Health. I would urge, therefore, that you consider very carefully whether you should not change your process, provided, of course that your licenses make this possible. In the long run I believe such a change would be economical and also give you the satisfaction of having a product causing less annoyance to you than has been the case heretofore. If the standard is raised to 120, and this could not be done at the price now obtained, I am sure that the Federal Trade Commission would consider a request to have the higher standard sold at a somewhat higher rate. I am sure that Dr. McCoy and I agree that we should not sacrifice purity to a moderate difference in cost.

I am making these suggestions not officially but

merely as personal recommendations based on my judgment of what the future will probably bring about.

With best regards, I am

Yours sincerely,

(Sgd.) JULIUS STIEGLITZ.

DEFENDANT'S EXHIBIT No. 174.

Herman A. Metz, President — Gustave P. Metz, Ph. D., Vice-President — Charles Fuehrlein, Secretary and Treasurer

H. A. METZ LABORATORIES, INC.
Modern Medicinal Preparations
122 Hudson Street

Laboratories,
642-646 Pacific Street,
Brooklyn, N. Y.

January 7th, 1919.

Dr. Julius Stieglitz,
University of Chicago,
Chicago, Ill.

My dear Dr. Stieglitz:

I have yours of the 3rd and note contents. I appreciate what you say and have been making tests along the lines indicated for some time. In the meantime, however, we are getting a much better grade of Nitro Oxy than we ever had before and I am carrying out the recrystalization with a view of determining just how far this influences the toxicity. I will be glad to keep in touch with you on our results.

Yours very truly,

(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 175.

(For release
July 9)

(Confidential)

UNITED STATES TARIFF COMMISSION—PRESS NOTICE
Washington, D. C.

REPORT OF THE DYE AND SYNTHETIC ORGANIC CHEMICAL INDUSTRY.

The United States Tariff Commission has just sent to press the annual "Census of Dyes and other Synthetic Organic Chemicals" for the calendar year 1922. This report will be printed and ready for distribution in the early part of July. The report shows that during the year 1922 the domestic dye and organic chemical industry made notable progress. Many products were manufactured for the first time in this country and there were large increases in the quantity of production with conspicuous reductions in prices.

Production of Dyes Increases 66 per cent.

The domestic production of dyes in 1922 by 87 firms was 64,632,187 pounds, an increase of 66 per cent. over that of 1921. The sales for 1922 totaled 69,107,105 pounds valued at $41,463,790. The size of the industry in 1922 is in sharp contrast with that of 1914 when only 7 firms manufactured a total of 6,619,729 pounds valued at $2,470,096. The dye industry in that period was in no sense a self-contained one, as the dyes produced were made almost entirely of intermediates imported chiefly from Germany. The increase in dye production during 1922 was largely due to an increase in general business activity. Beginning about June the textile and other dye-consuming industries became more active after the business depression and during the remaining months of the year the demand for dyes steadily increased.

Large Price Reductions.

The average sales price of all domestic dyes for 1922 was 60 cents per pound compared with 83 cents in 1921 and $1.26 per pound in 1917. The 1922 figures represent a 28 per cent decline from that of 1921. There were price reductions for both the bulk colors and dyes consumed in smaller quantities. The average price of indigo in 1921 was 45 cents per pound compared with 24 cents in 1922, a 47 per cent decrease. Direct Black EW declined 47 per cent; Acid Black, 28 per cent; Salicine Black U, 27 per cent; Alizarin, 20 per cent; Alizarin Saphirol B, 34 per cent; Wool Green S, 41 per cent; Indanthrene Blue GCD, 30 per cent and Eosine, 24 per cent.

Vat and Alizarin Dyes Show Large Increase.

One of the conspicuous developments of the year 1922 was the increased production of vat and alizarin dyes. The vat dyes are used in cotton dyeing and printing for the production of shades of remarkable fastness which are not destroyed by the modern laundry treatment. These colors are of great complexity and have presented serious difficulties in their commercial production. Their use is on the increase, as the public is beginning to recognize that fast shades are obtainable on cotton goods. The alizarin dyes are of great value in wool dyeing and the addition to this field of new dyes and the increased production of other dyes is a significant step in the development of a self-contained dye industry. The total production of vat dyes (not including indigo) was 1,075,992 pounds in 1922 compared with 345,152 pounds in 1921. The production of the anthraquinone dyes which includes alizarin dyes and a large part of the vat dyes, was 1,234,963 pounds.

Many New Dyes Produced.

Many important dyes were produced for the first time on a commercial scale in 1922. These comprise colors of great value for the dyeing of either silk, cotton, or wool, such as vat dyes, alizarin, developed cotton dyes, mordant and acid dyes. The increased production of these colors is reflected in a reduction of these imports. The production of these dyes in the United States has resulted only after large expenditures on research and most painstaking investigations. There are still gaps in our manufacturing program which should be filled to make a self-contained dye industry. These comprise certain of the vat dyes, together with certain of the mordant, acid and direct dyes.

Quality and Standardization of American Dyes.

The satisfactory quality and the uniform standardization of the American dyes is one of the striking evidences of the commendable progress made by the industry. Dye for dye, with relatively few exceptions, the domestic products are found equal to the pre-war German dyes. In the early stages of the domestic dye industry, after the outbreak of the Great War, many of our dyes were lacking in uniformity of strength and quality. This condition, however, no longer prevails as our domestic manufacturers are marketing dyes which are uniformly standardized as to strength and quality. Statements of the largest silk and woolen manufacturers and also from cotton printers and dyers agree as to the satisfactory results obtained from American dyes.

Production and Consumption.

The United States produces about 93.5 per cent of the dyes actually consumed. The imports of dyes in 1922 totaled 3,982,631 pounds, the production was

64,632,187 pounds, and the exports totaled 6,956,593 pounds. Consumption is assumed to equal production, plus imports, minus exports, or 61,658,225 pounds. The imports in 1922 were 6.2 per cent of our total production and 6.5 per cent of our consumption. In 1914 the imports were nearly 90 per cent of our consumption.

Production of Dyes by Classes.

Production of dyes in 1922 grouped by classes according to their method of application on fibers were as follows:

Acid	9,880,014	pounds.
Basic dyes	2,937,585	"
Direct cotton dyes	11,931,737	"
Lake and spirit-soluble dyes	1,009,512	"
Mordant and chrome dyes	3,749,701	"
Sulfur dyes	16,913,767	"
Vat dyes (not including indigo)	1,075,992	"
Indigo	15,850,752	"
Unclassified dyes	1,283,127	"

Dye Imports.

Total imports of dyes during the calendar year 1922 were 3,982,631 pounds valued at $5,243,258 compared with 4,252,911 pounds for 1921 and 45,950,895 pounds during 1914. Of the total imports for 1922, 44.58 per cent came from Germany; 43.72 per cent from Switzerland; 5.25 per cent from England; 4.18 per cent from Italy, and 2.27 per cent from all other countries. The 1922 figures show a decline of dye imports from Germany, since during the year 1921, 48.34 per cent came from Germany; in 1920, 51 per cent. The dyes imported represent for the most part dyes that are not manufactured in this country or not manufactured in an adequate quantity for domestic requirements. Vat dyes led in quantity of imports totaling 1,549,024 pounds (single strength); mordant and chrome dyes

totaled 716,790 pounds, direct cotton dyes, 671,621 pounds; acid dyes, 601,395 pounds; sulfur dyes, 194,883 pounds; basic dyes, 155,084 pounds and spirit-soluble dyes and color lakes, 76,853 pounds.

Large Expenditures for Research.

The coal-tar dye and chemical industry has expended over $21,000,000 during the last five years, 1917-1922. In probably no other field have there been such extensive investigations as in the manufacture of dyes. The accomplishments of that period and the progress and development of the dye industry may be attributed in no small part to the enormous expenditures in research. New dyes and other chemicals of great economic value have been developed and the costs of production have been reduced as is revealed in the conspicuous reduction in the prices of dyes.

1922 Dye Exports Declined 52 Per Cent.

The exports of dyes for 1922 show a large decrease from that of 1921 receding from $6,270,155 in 1921 to $3,023,127 in 1922. The 1922 figure is a 90 per cent decline from that of 1920 when exports reached the maximum value of $29,823,591. The large export during 1920 was during the boom year before German dyes made their appearance in the large dye markets of the world. Official imports of China, India, and Japan show that large quantities of German dyes were exported to these countries after 1920 and in addition Swiss, French and British dyes have been notable factors in the Far East markets.

1923 Dye Exports Increase.

Exports of dyes for the first four months of 1923 show an increase in value and quantity. This increased demand for American dyes, largely by the Far East

markets, may be attributed in part to the reduced imports of German dyes on account of the occupation of the Ruhr by the French in 1923.

International Dye Trade.

Prior to the war Germany dominated the world's dye markets producing about three-fourths of all synthetic dyes. Of the remaining fourth about one-half were made of German intermediates and consequently the production of these dyes was dependent upon Germany. Switzerland, although without raw materials, ranked second with about 7 per cent of the world's dye production. Practically all of the raw materials used by the Swiss were of German origin. Great Britain prior to the war produced about one-tenth of her requirements and France manufactured in French owned and operated plants about one-tenth of the consumption of that country. In both France and Great Britain dye plants were operated by German dye makers where final assembling operations were completed in the manufacture of dyes from intermediates of German production in order to meet the patent requirements of those countries. In the United States a small dye industry existed before the war, operating almost exclusively on imported intermediates, chiefly from Germany.

Soon after the declaration of war the supply of German dyes was cut off from the world's markets. An acute dye famine developed, threatening the activities of the vast textile and other industries dependent upon dyes for their operation. Prices increased to previously unheard of levels and certain dyes were not to be had at any price. During and since the war the United States, Great Britain and France have made extensive developments in the manufacture of dyes and each of these countries now produce from 80 odd to 90 odd per cent of their requirements and have in

addition exported dyes in significant quantities since the signing of the Armistice. The complete German monopoly of the world's dye production has been broken, at least temporarily, if not permanently. Extensive developments in dye manufacture in the various countries have resulted in an approximate doubling of the world's capacity to produce synthetic dyes and sharp competition may be expected in the world's dye markets.

The German dye industry offers a united front to the world in a combination known as the I. G. (Interessen Gemeinschaft). It possesses the advantage of cumulated experience, lower manufacturing costs and a unified organization for buying and selling. The three Swiss dye manufacturers have formed an amalgamation. Evidence of a severe competition is already at hand in the Far East markets. The United States lost a large part of this trade in 1921 and 1922 compared with her portion during the boom year, 1920. China leads the world as a consumer of dyes with a consumption estimated at about 70,000,000 pounds a year; the United States ranks second with an average consumption of about 55,000,000 pounds followed by Great Britain with consumption of nearly 50,000,000 pounds per year. It is expected that Germany will make every endeavor to recover a part of her former trade with these three dye consuming nations. In case protective measures are retained by the new dye producing countries Germany may resort to the establishment of factories or seek affiliations, as has already been done by the Swiss manufacturers in establishing plants in both the United States and Great Britain.

Other Finished Coal-Tar Products.

The total output of dyes and other finished coal-tar chemicals in 1922 by 164 firms was 88,368,131 pounds compared with 51,457,565 pounds by 147 firms

in 1921. The 1922 figure represents a 72 per cent increase over that of the previous year.

Color Lakes.—A total production of color lakes by 43 firms in 1922 was 10,578,664 pounds compared with 6,152,187 pounds in 1921.

Photographic Chemicals.—The production by 7 firms of those coal-tar products used as photographic developers totaled in 1922, 345,798 pounds as compared with 183,798 pounds in 1921.

Medicinals Show Large Increase.—This class of coal-tar products may be considered one of the most important as they are essential to the nation's welfare. The total production of synthetic medicinals of coal-tar origin for 1922 was 2,946,347 pounds compared with 1,545,917 pounds in 1921.

Perfumes and Flavors.—The total production of flavors of 20 firms for 1922 was 1,215,668 pounds and the total output of 17 firms making perfumes for 1922 was 793,148 pounds compared with 119,335 pounds.

Synthetic Phenolic Resins.—These products are used as substitutes for amber in the making of pipe stems and similiar articles, and in the manufacture of varnishes and lacquers. They also find a large consumption in the manufacture of electric insulators. The production for 1922 by 5 firms was 5,944,133 pounds.

Synthetic Tanning Materials.—The production of these products in 1922 by 4 firms amounted to 1,910,519 pounds, a slight increase over that of 1921. These products are of interest as our domestic supply of tanning barks is rapidly decreasing and we are largely dependent upon imported natural tanning materials

for our tanning industry. Synthetic tanning materials are of comparatively recent origin and these products have considerable promise for further development.

Camphor Substitutes Increase.

There was a large increase in the production of tricresyl phosphate, which is used as a substitute for camphor in the manufacture of pyroxylin plastics. Although these products are not used to replace camphor for all purposes in this industry, their future development by the coal-tar industry will overcome, at least to some extent, the monopoly on camphor which Japan has held in the past.

Coal Tar Production Highest in History.

Preliminary figures of the Geological Survey indicate that the production of coal tar and by-products from the by-product coke industry during the year 1922, was the greatest in the history of the industry. Production of the by-product coke was about 28⅓ million tons, which exceeded the production of both beehive and by-product coke during the previous year. The replacement of beehive ovens by the by-product coke ovens, which recover the tar, ammonia and gas products, entirely lost in the old type of beehive ovens, is of great economic significance in the conservation of our natural resources for (1) the by-product ovens increase the production of ammonia for fertilizer and other uses; (2) the gas produced in these ovens is used for lighting and industrial heating; and (3) the tar serves as a basis for the domestic coal-tar dye and chemical industry, and yields motor fuel, solvents and road pitches.

The production of tar is greatly in excess of the requirements of the dye and coal tar chemical industries. A large amount of the tar is burned and, of the

remaining portion refined, only a part is purified to such final products as benzene, toluene, naphthalene and anthracene, owing to the strong demand for partly refined products, motor fuel, solvents, soft pitches and the like.

Synthetic Organic Chemicals of Non-Coal Tar Origin Shows Large Increase.

Conspicuous progress has been made within the past few years in the development and manufacture of synthetic organic chemicals of non-coal tar origin. This includes acids, alcohols, esters, ketones, aldehydes, etc., which are used as medicinals, solvents, perfumes, flavors and in many industrial and other processes. This field holds high promise of further expansion and it is expected that many new products of great economic value will be manufactured and placed on the market. The production of synthetic organic chemicals other than those derived from coal tar, during 1922 was 79,202,155 pounds; the production in 1921 totaled 21,545,186 pounds.

DEFENDANT'S EXHIBIT No. 176.

REPORT OF U. S. TARIFF COMMISSION FOR THE YEAR 1922.

(Not printed.)

DEFENDANT'S EXHIBIT No. 177.

A STATEMENT

OF THE ACTION TAKEN AND CONTEMPLATED
LOOKING TO

THE FIXATION OF NITROGEN

PURSUANT TO SECTION 124, "NITRATE SUPPLY," OF THE ACT OF CONGRESS APPROVED JUNE 3, 1916, GENERALLY KNOWN AS THE NATIONAL DEFENSE ACT : : : : :

DIVISION T, ORDNANCE OFFICE
WAR DEPARTMENT AUGUST 21, 1917

PUBLISHED BY AUTHORITY OF THE SECRETARY OF WAR

(W. D. O. O., T-1422)

WASHINGTON

GOVERNMENT PRINTING OFFICE

1917

STATEMENT OF ACTION TAKEN AND CONTEMPLATED LOOKING TO THE FIXATION OF NITROGEN.

PURSUANT TO SECTION 124, "NITRATE SUPPLY" OF THE ACT OF CONGRESS APPROVED JUNE 3, 1916, GENERALLY KNOWN AS "THE NATIONAL DEFENSE ACT."

DIVISION T, ORDNANCE OFFICE, WAR DEPARTMENT,

August 21, 1917.

The national defense act, in its section 124, provided for a supply of nitrogenous material by authorizing and empowering the President to make or cause to be made such investigation as, in his judgment, might be necessary to determine the best, cheapest and most available means for the production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers and other useful products this by water power or any other power as might be best and cheapest—to designate for the exclusive use of the United States such water power sites as in his opinion might be necessary to construct and operate dams, etc., or other means than water power as in his judgment might be best and cheapest for the generation of power, and for the production of nitrates as above; also to procure by condemnation or otherwise any lands, rights of way, materials, minerals, and processes, patented or otherwise. It was provided by this act that "the products of such plants shall be used by the President for military and naval purposes to the extent that he may deem necessary, and any surplus which he shall determine is not required shall be sold and disposed of by him under such regulations as he may prescribe."

The primary step required under these provisions of law was, therefore, an investigation to determine the best, cheapest, and most available means for the production of the desired nitrogenous materials, or "nitrates."

With this purpose in view, the president of the National Academy of Sciences in cooperation with the

American Chemical Society, and at the request of the Secretary of War, appointed a committee consisting of the following scientists and engineers:

Arthur A. Noyes, Chairman.
Leo H. Baekeland.
Gano Dunn.
Charles H. Herty.
Warren K. Lewis.
Michael I. Pupin.
Theodore W. Richards.
Elihu Thompson.
Willis R. Whitney.

In addition to this committee's investigations, special agents were appointed to acquire all possible further information. These agents had access to some quite unusual sources of information, and collected data, including detailed records of the costs of various processes employed at home and abroad, which have been most instructive, but which, on account of the sources from which they were obtained and the conditions under which they were given, can not be made public.

One of these agents was Mr. Eysten Berg, who visited Europe and submitted a report. Another of these agents was Dr. Charles L. Parsons, chief chemist of the Bureau of Mines, Interior Department, who, in the course of his investigations, visited the noted plants of Italy, France, England, Norway, and Sweden during the fall of 1916, and was able to give in his reports a most valuable summary and comparison of recent progress and conditions in the nitrogen-fixation industry at home and abroad, elaborated by extensive statistics of a confidential nature.

In his reports Dr. Parsons laid special emphasis upon the rapid development in the United States of processes for the direct synthesis of ammonia from

nitrogen and hydrogen, for its synthesis through the formation of cyanides as an intermediate product, and for the oxidation of ammonia to nitric acid. He called attention to the process developed by the General Chemical Co. for the synthesis of ammonia by the direct combination of nitrogen and hydrogen at lower pressures than those previously deemed necessary and contemplated by the Haber patents, and to the facts that this process had been in successful use on a large experimental scale and that, indeed, one unit thus in use was larger than those supposed to be in use in Germany. He showed that this American company had also developed and brought to a commercial basis a method of producing the mixture of nitrogen and hydrogen required for the synthesis to ammonia at a cost lower than any theretofore attained in this country or probably even in Germany, and that this company had progressed so far that it had already made plans for a commercial plant using this process. Dr. Parsons also obtained from the General Chemical Co. a tentative proposal of an agreement whereby that company would grant to the Government of the United States the use of its processes and designs for apparatus for the synthesis of ammonia and for the oxidation of ammonia to nitric acid, upon the following very liberal terms—without compensation of any kind for products to be used exclusively for munitions of war, and with a royalty upon products to be used for fertilizers.

Dr. Parson's reports also contained a summary of recent developments in the cyanide process and a confidential statement from the Nitrogen Products Co. of their estimated costs by that process, together with an offer of unrestricted use of their patents upon such processes, without any compensation for use in the manufacture of munitions of war, and subject to a

royalty of $5 per ton of fixed nitrogen for use of their processes for the production of fertilizer.

He was also able to report that under a cooperative arrangement between the Bureau of Mines and the Semet-Solvay Co. a small plant for the oxidation of ammonia to nitric acid had been constructed and was progressing successfully; also that an experimental plant for the same purpose was being operated by the General Chemical Co. and had developed some new features, thus showing that satisfactory progress was being made in this country toward the solution of the difficulties involved in the construction and operation of such a plant upon a large scale.

Finally, Dr. Parsons stated his belief that the processes using large quantities of power would be in this country displaced by these newer processes which require comparatively little power, and he recommended that the Government build a moderate sized plant for production of ammonia by synthesis, and undertake active experimentation with the cyanide process.

With the object of securing an opinion, based upon a comprehensive view of all the facts collected by the several agencies, the Secretary of War appointed the following Committee on Nitrate Supply:

Brig. Gen. William Crozier, Chief of Ordnance, United States Army, War Department.

Rear Admiral Ralph Earle, Chief of Bureau of Ordnance, Navy Department.

Brig. Gen. William M. Black, Chief of Engineers, United States Army, War Department.

Mr. F. W. Brown, Bureau of Soils, Department of Agriculture.

Dr. Leo H. Baekeland, Yonkers, N. Y.

Mr. Gano Dunn, 43 Exchange Place, New York.
Dr. Charles H. Herty, 35 East Forty-first Street, New York.
Dr. William F. Hillebrand, Bureau of Standards, Department of Commerce.
Dr. Arthur A. Noyes, Institute of Technology, Boston, Mass.
Dr. Charles L. Parsons, Bureau of Mines, Interior Department.
Dr. Willis R. Whitney, Schenectady, N. Y.

This committee gave careful consideration to all the information available, and duly weighed the several purposes stated by the language of the act, recommending the following action:

I. That the Government negotiate with the General Chemical Co. for the right to use its synthetic ammonia processes.

II. That contingent upon satisfactory result of such negotiations, there be set aside from the $20,000,000 appropriated, such sum, estimated as about $3,000,000 as should be necessary to build a plant to produce by that process about 60,000 pounds of ammonia per 24-hour day; location, southwest Virginia preferably.

III. That out of the same apropriation, $600,000, or as much more as needed, be set aside for building a plant for producing by oxidation of ammonia about the equivalent of 24,000 pounds of 100 per cent nitric acid per 24-hour day.

IV. That the War Department proceed at the earliest practical date with the construction of the oxidation plant and contingent upon satisfactory ar-

rangements with the General Chemical Co. with the construction of the synthetic ammonia plant also.

V. That the Government negotiate with the Nitrogen Products Co. with the view to a contract for the right to use that company's patents and proceed with experimentation looking toward the industrial development of the Bucher process for production of ammonia through cyanide; and that contingent upon satisfactory arrangement as above a sum not over $200,000 be allotted out of the nitrate supply appropriation.

VI. That out of the $20,000,000 nitrate supply appropriation $100,000 be allotted for active investigation of processes for the industrial production of nitrogen compounds useful in the manufacture of explosives or fertilizers—this under supervision of the War Department.

VII. That in order to increase the production of ammonia and toluol the Government promote the installation of by-product coke ovens by directing priority in production and transportation of materials and parts.

VIII. That the decision as to more extensive installation of nitrogen fixation processes and water-power development in connection with them be postponed until the plants above recommended are in operation or until further need arises.

IX. That while the preceding recommendations include all the measures that can now judiciously be taken for the fixation of ammonia it is the opinion of the committee that the immediate accumulation and the permanent maintenance of an ample reserve not less than 500,000 tons of Chile saltpeter is the measure most urgently necessary.

The foregoing report having met with general approval, the Secretary of War has directed the Chief of Ordnance of the Army to proceed to carry out the first six of the recommendations of the Nitrate Supply Committee and has announced that for the present the consideration of development of large water-power installations which had been begun by the interdepartmental board (Secretaries Baker, Lane, and Houston) appointed by the President would be suspended.

The outstanding feature of this program for action is the construction of the synthetic ammonia plant, using the General Chemical Co.'s process which was largely developed by their engineer, Mr. Frederick de Jahn. As has been indicated, this process has already had trial upon a sufficient scale to demonstrate its practicability and to indicate as most probable its ability to produce ammonia at a very favorable price. In fact, in the search of the Nitrate Supply Committee for the best, cheapest, and most available means for the production of nitrates and other products that would be of use in the manufacture of munitions and in the manufacture of fertilizers, this process appeared to give more promise of affording relief from dependence upon foreign nitrates for the defense of the country and more promise of a reduction in the cost of the nitrogenous constituent of fertilizer than others. Furthermore, this process is one which can be put into operation in a much less time than would be required to develop such a large water power as would be needed for other prominent processes available. This process gives as its primary product ammonia which may be used directly as a constituent of fertilizer or which can be converted into ammonium sulphate or ammonium phosphate in the same manner as ammonia from any other source may be so converted. Processes for such conversion are known and appear to require no special development under this particular act. The

cost of ammonia is expected to be quite low by this process, and will not be increased when the ammonia is used for munitions manufacture by any payments whatever for the rights to the processes, a satisfactory agreement to this effect having been made with the General Chemical Co. That same agreement provides that in so far as the General Chemical Co.'s processes shall be used in the manufacture of products for fertilizers a royalty of $5 per ton of 2,000 pounds of fixed nitrogen in any form shall be paid. This extremely liberal arrangement will add but a very small amount to the cost of producing the nitrogenous portion of the fertilizer, amounting to a charge of something less than 25 cents per ton of the usual mixed fertilizer. From the tentative offer of the Nitrogen Products Co. it is expected that there will be formally ratified a like liberal agreement for the use by the Government of that company's processes. There thus appears at this time to be no necessity for the President to exercise the rights granted by the act for the acquisition of necessary processes by condemnation, all that it has been considered necessary to use having been freely granted upon liberal terms.

The Ordnance Department of the Army is proceeding as energetically as possible with the work entrusted to it, has made arrangements for taking over orders at cost which the General Chemical Co. had placed for apparatus for a considerable size plant for their own use and thus gains considerable headway upon much of the apparatus, as well favorable prices; the prominent engineering and construction firm, the J. G. White Engineering Corporation, has been engaged for the remaining engineering work and the actual construction; the plans for apparatus are essentially complete, and designs for all of the buildings are very nearly completed as a result of work done by the engineers of the General Chemical Co. There is

thus at the present time every reason to expect that notwithstanding the extreme difficulty and expense involved in any large construction work at this time the plant will be not unduly delayed.

The construction of the oxidation plant is a less extensive work, and its commencement is being postponed for a short time in order to reap the full advantage of the important experimental work being carried on by the General Chemical Co., the Semet-Solvay Co., and the Bureau of Mines.

PROCEEDINGS OF THE NITRATE SUPPLY COMMITTEE.

WASHINGTON, D. C., *May 11, 1917.*

The Nitrate Supply Committee, constituted as follows:

Brig. Gen. William Crozier, Chief of Ordnance, United States Army, War Department;

Rear Admiral Ralph Earle, Chief of Bureau of Ordnance, Navy Department;

Brig. Gen. William M. Black, Chief of Engineers, United States Army, War Department;

Mr. F. W. Brown, Bureau of Soils, Department of Agriculture;

Dr. Leo H. Baekeland, Yonkers, N. Y.;

Mr. Gano Dunn, 43 Exchange Place, New York;

Dr. Charles H. Herty, 35 East Forty-first Street, New York;

Dr. William F. Hillebrand, Bureau of Standards, Department of Commerce;

Dr. Arthur A. Noyes, Institute of Technology, Boston, Mass.;

Dr. Charles L. Parsons, Bureau of Mines, Interior Department;

Dr. Willis R. Whitney, Schenectady, N. Y.;

and appointed by the Secretary of War to succeed and continue the work of a former committee which was appointed by the National Academy of Sciences at the request of the War Department, met at 10 o'clock a. m., at the call of Gen. Crozier.

All of the members were present excepting Gen. Black, who was represented on the committee by Col. Charles Keller of the Corps of Engineers. Col. C. B. Wheeler, Ordnance Department, also sat with the committee and took part in its proceedings, Gen. Crozier presiding at the meeting but not voting. The authority for Gen. Crozier to call the committee together and the object of the meeting is indicated by the following letter of the Secretary of War.

WAR DEPARTMENT, *Washington, April 14, 1917*

Brig. Gen. WILLIAM CROZIER,

Chief of Ordnance, United States Army,
Member Nitrate Supply Committee.

SIR: Referring to my letter of March 9 last appointing you a member of the Nitrate Supply Committee, I desire that you shall act in calling the committee together at appropriate times, for necessary action, and that you shall convey to it such communications as I may have to make.

The committee should now be called together as soon as practicable for the purpose of considering the reports and recommendations concerning the process which should be adopted for the manufacture of nitrates, with reference to the possibility of harmonizing the various views and reaching a common conclusion in regard to as many of the recommendations as possible.

Respectfully,

NEWTON D. BAKER, *Secretary of War.*

After a preliminary statement by the chairman, the committee proceeded to the matter in hand and considered previous reports and recommendations concerning the process which should be adopted for the manufacture of nitrates, which included the following papers:

I. Report on nitrate supply presented to the Secretary of War by the Committee on Nitrate Supply of the National Academy of Sciences and of the National Research Council, dated January 20, 1917.

II. Preliminary report to the Ordnance Department of the War Department on the nitrogen industry with recommendations regarding the methods to be used by the United States Government in procuring the necessary nitric acid required for munitions by the War and Navy Departments by Charles L. Parsons, chief chemist, Bureau of Mines, Department of the Interior, January 27, 1917. (See p. 833, this issue.)

III. Report on the nitrogen industry by Eysten Berg, C. E., dated January 15, 1917.

IV. Report on the nitrogen industry by Charles L. Parsons, chief chemist, Bureau of Mines, Department of the Interior, dated April 30, 1917. This latter report included an offer of the General Chemical Co., granting to the Government under certain conditions the right to use its synthetic process for the production of ammonia, etc., and also an offer of the Nitrogen Products Co., granting to the Government under certain conditions the right to use the so-called Bucher process for the production of sodium cyanide and ammonia. (See p. 839, this issue.)

After a deliberate and careful consideration of all the matter and information at the disposal of the committee, it submits the following as its action.

The committee, appreciating the offer of the General Chemical Co., recommends:

1. That the Government enter into negotiations to acquire the rights to use the synthetic ammonia process of that company.

2. That contingent upon satisfactory arrangements with the General Chemical Co., out of the $20,000,000 nitrate supply appropriation, such sum as may be needed, now estimated at $3,000,000, be placed at the disposal of the War Department to be used in building a synthetic ammonia plant, employing the said process of the General Chemical Co. and of a capacity of 60,000 pounds of ammonia per 24-hour day, said plant to be located in a region where land, water, coal, and sulphuric acid are cheaply available, where good transportation facilities exist, and where the proposed new powder plant of the Government can be properly located. In the opinion of this committee all of these conditions just enumerated are best fulfilled by a location in southwest Virginia or contiguous region.

3. That out of the $20,000,000 nitrate supply appropriation an amount now estimated at $600,000, or as much as may be needed, be placed at the disposal of the War Department to be used in building a plant for the oxidation of ammonia to nitric acid and the concentration of nitric acid, of a capacity equivalent to 24,000 pounds of 100 per cent nitric acid in a 24-hour day, said plant to be located in the neighborhood of the aforesaid synthetic ammonia plant and the proposed new powder plant of the Government.

4. That the War Department proceed at the earliest practical date with the construction of the oxidation plant and contingent upon a satisfactory arrange-

ment with the General Chemical Co., also with the synthetic ammonia plant, and that the Government give such priority orders as will secure from contractors prompt delivery of the materials and rapid construction of the structure and machinery needed for these plants.

The committee appreciating the offer of the Nitrogen Products Co. granting, in this country, to the Government under certain conditions the right to use the so-called Bucher process for the production of sodium cyanide and ammonia recommends:

5. That a form of contract, drawn with the advice of the legal authorities of the Government, such as to give that company no guaranty or exclusive rights in the process, or in its future development, beyond those which the company's own patents give to it, be entered into with the Nitrogen Products Co., and that experimentation looking toward the industrial development of the Bucher process for the production of ammonia be at once proceeded with. And further that, contingent upon a satisfactory arrangement with the Nitrogen Products Co., a sum not to exceed $200,000 be allotted for this purpose out of the $20,000,000 nitrate supply appropriation.

6. That out of the $20,000,000 nitrate supply appropriation $100,000 be made available for the active prosecution of investigations of processes for the industrial production of nitrogen compounds useful in the manufacture of explosives and of fertilizers, and that these investigations be planned and supervised by the War Department.

7. That, in order to increase the production of ammonia and toluol, the Government promote the installation of by-product coke ovens by directing that

priority be given in the production, delivery and transportation of the materials and parts needed in their construction.

8. That the decision as to more extensive installation of nitrogen-fixation processes and water-power development in connection with them be postponed until the plants above recommended are in operation or until further need arises.

9. While the preceding recommendations include all the measures that can now judiciously be taken for the fixation of nitrogen and the oxidation of ammonia, it is the opinion of the committee that the immediate accumulation and the permanent maintenance of an ample reserve, not less than 500,000 tons of Chile saltpeter, is the measure most urgently necessary.

There being no further business before it, the committee then, at 6.15 p. m., adjourned to meet at the call of the chairman.

WILLIAM CROZIER, *Chairman,*
Brigadier General, Chief of Ordnance, United States Army

RALPH EARLE,
Rear Admiral, Chief of Ordnance, United States Navy.

CHARLES KELLER,
Colonel, Corps of Engineers, United States Army.

F. W. BROWN.
LEO H. BAEKELAND.
GANO DUNN.
CHARLES H. HERTY.
WM. F. HILLEBRAND.
ARTHUR A. NOYES.
CHARLES L. PARSONS.
WILLIS R. WHITNEY.

PRELIMINARY REPORT TO THE ORDNANCE DEPARTMENT OF THE WAR DEPARTMENT ON THE NITROGEN INDUSTRY WITH RECOMMENDATIONS REGARDING THE METHODS TO BE USED BY THE UNITED STATES GOVERNMENT IN PROCURING THE NECESSARY NITRIC ACID REQUIRED FOR MUNITIONS BY THE WAR AND NAVY DEPARTMENTS.

[All confidential data including detailed costs omitted.]

By CHARLES L. PARSONS, Chief Chemist.

BUREAU OF MINES, DEPARTMENT OF THE INTERIOR,

January 27, 1917.

Brig. Gen. WILLIAM CROZIER,

Chief of Ordnance, War Department.

SIR: Since giving you in a letter bearing date of June 6, 1916, my personal opinion on the nitrate situation, based at that time on an incomplete study, I have made a very careful study of the processes used throughout the world for the production of nitric acid, and, in the employ of the War Department, I have made a trip to Italy, France, England, Norway, and Sweden, visiting many plants producing nitric acid. I have had conferences with leading engineers in those countries on the situation. It will require some weeks still to make my complete report, with full detailed estimates and costs, on the various processes employed as applied to American conditions, but the details of these processes are now sufficiently in hand to warrant formulating my conclusions as to the proper procedure to be followed.

The conclusions are based, by your instructions, on the maximum requirements for munitions purposes of the United States Government of:

Nitric acid:	Tons.
In time of peace	20,000
In time of war	180,000

With these quantities as a maximum and a sufficient supply of sodium nitrate in storage to meet the requirements of the Government for a period of six months to one year, no serious emergency problem confronts the Government. The increase in the output of ammonia from by-product coal since 1915, if oxidized to nitric acid, is alone more than sufficient to meet this requirement. The oxidization of ammonia, including that produced from the destructive distillation of coal, presents no serious difficulties, and the necessary plants using the emergency procedure adopted in Germany could, in case of need, be quickly installed to meet the Government requirements. Such installation would involve much cruder procedure, such as lower efficiency of oxidation and absorption of the nitrous oxide in soda lye, than would be adopted after careful experimentation and experience in the operation of the most efficient plants, but it would nevertheless furnish the country with the nitric acid required.

In my opinion the following methods include the only ones which need to be considered in the final choice of the procedure to be employed by the Government in providing a source of nitrate supply. There are many other proposed methods, modification of methods, and investigations under way, but they have proved either inapplicable when tried industrially or they have not been sufficiently tried on a practical scale to warrant the Government in considering them in this first analysis. Some of them may later be successfully developed and research on the fixation of nitrogen should be continuously carried on under Government auspices.

Following are the methods considered herein:

I. Nitric acid may be obtaned directly from the air, with no raw material except that contained therein

by directly burning the nitrogen and oxygen of the atmosphere by means of the electric arc.

II. Nitric acid may be obtained from the oxidation of ammonia.

The processes to be considered are:

(A) Arc process, in which nitrogen and oxygen are directly burned to nitric oxide under the influence of the electric arc.

(B) Haber process, in which nitrogen and hydrogen are directly combined to form ammonia.

(C) Cyanamid process, in which carbon and lime are first heated in an electric furnace to form calcium carbide. The carbide is then treated with pure nitrogen to form cyanamid, and, in turn, the cyanamid is hydrolyzed by steam in special autoclaves to produce ammonia.

(D) By-product ammonia, obtained as a by-product in so-called by-product coke ovens by the destructive distillation of bituminous coal.

(E) Cyanide process, not yet commercially developed, but carrying great promise of cheap combined nitrogen. This process embraces the direct combination of nitrogen, carbon, and sodium to form sodium cyanide by heating together an intimate mixture of carbon, soda ash, and nitrogen in the presence of finely divided iron.

All of the processes producing ammonia involve the further oxidation of that ammonia to nitric acid. The ammonia may be oxidized by means of heated (electrically, or otherwise) platinum by presenting as large a surface as possible of glowing platinum to the proper mixture of ammonia and air, under which conditions the nitrogen in the ammonia burns to nitric oxide. The methods to be considered for the oxidation of ammonia are:

(*a*) Ostwald-Barton method, now used in France and England; and probably also in Germany.

(*b*) Frank Caro method, now used to produce 100,000 tons of concentrated nitric acid in Germany, and experimentally installed with modifications in two small plants in this country.

(*c*) The oxidation in solution of ammonia or dicyanamid to ammonium nitrate, as yet carried out only in an experimental installation in Sweden, and being installed in two plants now in process of erection—one near Goteborg, Sweden, and the other and larger plant near Berlin, Germany.

The Arc Process.

The arc process was the first commercial process to be developed for the fixation of nitrogen. It is now installed in southern Norway, employing 250,000 kilowatts of electricity developed from the cheapest large installation of hydroelectric power in the world. This is the only large installation of the arc process, but small installations of an experimental nature have been made in other countries.

By the arc process nitric acid is produced by the direct combination of the oxygen and the nitrogen of the air to form a dilute gaseous mixture of nitric oxides with air. The nitric oxide is converted into nitric dioxide and is absorbed in water in immense granite towers to form nitric acid. The method is one of the most inefficient known as regards production in relation to power consumed. Nevertheless, on account of the very cheap horsepower available in Norway and the fact that the raw materials cost nothing and are always at hand, nitric acid can there be produced by the arc process at a cost less than by any other commercial process.

Incidental to the production of nitric acid, a large

excess of heat is developed, which can be, and is in part, converted into steam, which may be, and is, used for concentrating the weak nitric acid obtained in the absorption towers to the strong acid required for munition works. The excess of steam is so large that many other methods for its application have also been devised. As the labor costs also are low, when once under way the operation goes on almost automatically. As the formation of nitric acid is direct and involves only the nitrogen and oxygen of the air and water as raw materials, no complicated processes involving intermediate products are necessary, as is more or less the case with all other processes.

In spite of these manifest advantages, however, it appears to be the general opinion of the European engineers with whom I came in contact that even with the cheap horsepower enjoyed by the Norwegian plants, they might have had to discontinue their operations except for the stimulus given by the present European war. Even as it is, the Norsk Hydro Co., operating the arc plants at Notodden and Rjukan, has been obliged to install large ammonia-producing plants in order that they might convert their nitric acid to ammonium nitrate and thus render it transportable to markets where it was needed.

The cost of horsepower used for the production of nitric acid in Norway is less than $5 per horsepower-year. The best estimates in my possession indicate that with horsepower at $10 per horsepower-year, the cost of finished strong nitric acid at the plant would be as cheap as by any other process now in operation. However, the low cost of producing nitric acid by the arc process is outweighed by so many other disadvantages that, in my opinion, the process is entirely inapplicable to the uses of the United States Government, and this opinion appears to be shared by all who have given careful thought to the

subject. The cost of installing the arc process is high and it involves the use of an amount of horsepower that seemingly is not available on the American continent within reach of the points where the nitric acid would have to be used.

Nitric acid is not economically transportable. As strong nitric acid it can be transported only if tank cars made of aluminum can be obtained, and aluminum is a metal that, for this purpose, has many disadvantages besides cost. The nitric acid might be transported mixed with sulfuric acid in iron tank cars, but this involves the erection of large sulphuric-acid factories near to the nitric-acid plant and a large addition in freight rates. Freight rates on such nitric acid as is transported are very high and must always remain high on account of the dangers involved.

Nitric acid does not readily lend itself to the production of fertilizer material, although it may be neutralized with lime to form calcium nitrate or with ammonia to form ammonium nitrate—both of which may be transported and either of which might be used as a fertilizer. However, calcium nitrate and ammonium nitrate are not applicable to the manufacture of the mixed fertilizers that are demanded by the American farmers.

The great difficulty that has faced the Norwegian plants from the beginning, namely, a market for their products, would in peace times be a serious obstacle to the operation of a large arc plant in the United States. An arc plant at its best involves the use of 2.33 horsepower-years per ton of weak nitric acid. This means that a water-power development of at least 50,000 horsepower would be necessary for the peace requirements of the Government, and a development of 440,000 horsepower would be required for war purposes. These figures are minimum figures on the basis of the relatively high efficiency reached in Norway. No

installation should be considered by the Government of less than 75,000 horsepower for peace requirements or 550,000 horsepower for war requirements. If the arc process is to be used it would also be advisable to arrange for the production of explosives at the point where the arc plant was located. This would of course involve the transportation of all other raw materials needed, such as benzol, toluol, alcohol, acetone, glycerine, sulphuric acid, cotton, and other materials too numerous to mention, to the plant and the transportation of the finished explosives therefrom to the place of consumption. As these materials are highly combustible and for the most part carry high freight rates, it has been found necessary the world over to locate the plants intended for the production of munitions near to the point where the munitions are likely to be consumed.

An arc plant of sufficient size to meet the requirements of the Government in time of war would probably have to remain idle for the main part during times of peace, owing to the difficulty of disposing of the nitric acid that the plant would produce if in operation. On account of the large amount of horsepower required and the consequent extent of the necessary plant and power-absorption capacity, the cost of installing an arc plant to meet the war-time requirements of the Government would be several times the total appropriation made for the purpose by Congress.

ADVANTAGES.

1. Cheapest cost of nitric acid[1] if power can be obtained at $10 per horsepower-year or less, and if the power is efficiently utilized in a large plant run continuously to capacity.

2. Large amount of waste heat available for producing steam for the concentration of nitric acid and for other purposes.

[1] This does not mean that it is the cheapest form of combined nitrogen for fertilizer purposes.

3. Free raw material.

4. Direct production of nitric acid without intermediate products.

5. Small amount of labor involved.

DISADVANTAGES.

1. Large amount of horsepower required per ton of nitric acid—at least 500,000 horsepower for the Government requirements.

2. Greater dilution of nitric acid when first produced—30 to 35 per cent acid as against 50 to 55 per cent acid by other processes.

3. Large cost of installation both for horsepower and for plant—probably four times the present Government appropriation to meet the Government's wartime requirements.

4. Three-fourths of plant probably idle in time of peace, with consequent large idle investment involved.

5. Nontransportability of the nitric acid produced.

6. Difficulties of disposing of the nitric acid not needed for munitions.

Haber Process.

The Haber process is the chief process now used in Germany for the production of ammonia. Ammonia may be oxidized to nitric acid. The process has grown very rapidly in the last three years. It was first commercially installed in Germany in 1913 with a plant capacity of 30,000 tons of ammonium sulphate. Seemingly, it actually produced in that year some 20,000 tons of ammonium sulphate. This grew to 60,000 tons in 1914, 150,000 tons in 1915, and 300,000 tons in 1916, and it is authoritatively stated that with new works now under construction by the Badische Co., the 1917 output of ammonia by the Haber process will

be equivalent to over 500,000 tons of ammonium sulphate.

The Badische Co., which owns the Haber plants and process, has developed the industry without Government aid other than the sale of its product, and appears to be very certain as to the ability of this process to compete, when the war is over, with all other processes for the fixation of nitrogen and also with Chile saltpeter in the fertilizer markets. On the other hand, the cyanamid industry in Germany has been developed during the war with the aid of Government subsidies. The Badische Co. had developed in Germany an arc process known as the Schoenherr process, which is a close competitor of the Birkeland-Eyde process developed in Norway. The Badische Co. and the Norsk Hydro Co. pooled their interests and the Schoenherr process was installed, together with the Birkeland-Eyde process, at Rjukan, Norway. The two are now working together side by side in Rjukan, and are owned by the Norsk Hydro Co.—the Badische Co. having sold their interests in the arc process as soon as they had developed the Haber process.

By the Haber process, nitrogen from the air and hydrogen obtained from water are directly combined to form ammonia under the influence of finely divided iron. The production and purification of hydrogen made either by the reducing action of coal or iron upon steam involves one of the chief items of cost in the Haber process. The fact that the combination of nitrogen and hydrogen takes place at temperatures above 500° C. and at pressures of 125 to 150 atmospheres involves some danger and many other technical difficulties which have, however, seemingly been overcome in Germany. The technical control of the Haber process is of such great importance and requires so high a degree of training and skill that it is reported if the Badische people were to lose their

present technical staff of experts, familiar with the process, many months would be required to train another staff capable of applying the process in practice.

The Haber process is not at present in use outside of Germany on account of the lack of detailed information regarding plant construction and operation and also owing to the very large royalty demanded by the Badische Co. for its use by other concerns. It is, however, more than probable that the Badische Co. will itself install and develop the process outside of Germany when the war is ended.

Trustworthy information regarding the costs of production of ammonia by the Haber process indicates that pure anhydrous ammonia can be produced in liquid condition for a cost slightly less than 4 cents per pound. It is improbable that any arangement could be made for the United States Government to use the Haber process pending the conclusion of the European war. It is probable that when the war is ended the Haber process will be installed or will be available for installation in the United States. It is the cheapest process for the production of synthetic ammonia. It is independent of cheap power—the power being a small fraction of its cost. If desirable, it could be readily installed in moderate sized units in connection with ammonia oxidizing plants at any munitions plant.

ADVANTAGES.

1. Cheap ammonia.

2. Ammonia in water-free liquid condition ready for immediate oxidation without purification.

3. Availability of raw material (air, water, and coal).

4. Possibility of erecting comparatively small plants wherever needed.

5. Easy availability of product for transportation and for fertilizer.

DISADVANTAGES.

1. Inability to procure technical details, use of method, and trained technical force without the assistance of the Badische Co., except as the result of many months and probably years of experimentation. This is largely owing to the difficult engineering problems involved in the use of pressures as high as 150 atmospheres and temperatures of 500° to 600° C.

2. High repair and renewal costs.

3. Undoubtedly high royalty that would be demanded if the Government were to install and operate this process itself. Inability to come to terms with the Badische Co. as to the use of its patents is reported to have been the sole reason for the nonadoption of this method by two large American corporations and one Norwegian corporation.

4. Patents and processes controlled in America by one corporation.

Cyanamid Process.

The cyanamid process has been developed in many parts of Europe, but in the Western Hemisphere only at Niagara Falls, Ontario, Canada. It requires cheap power for its successful operation and has obtained its greatest development owing to the fact that it requires only about one-fifth the horsepower per ton of fixed nitrogen per year that is required by the arc process. In other words, from a definite horsepower installation the cyanamid process produces about five times the amount of combined nitrogen that is produced by means of the arc process.

The raw materials required are coal for lime burn-

ing, anthracite coal or coke for the production of calcium carbide, limestone essentially free from magnesia, fluorspar, and nitrogen obtained from liquid air. The process involves:

First, the production of calcium carbide in a large electric furnace from lime and coke or anthracite coal.

Second, the fine grinding of this calcium carbide out of contact with air, and the heating of a portion of the ground mass to a red heat to start the absorption of the nitrogen which is then added, as long as it is taken up by the carbide, to form cyanamid. The cyanamid is in turn ground and given a special treatment to remove acetylene gas in order to avoid explosions later. The cyanamid, mixed with sodium carbonate and lime, is then treated with steam in large autoclaves to convert the nitrogen of the cyanamid into ammonia gas. The process will thus be seen to involve a number of steps and to be somewhat complicated.

$$CaO+3C=CaC_2+CO$$
$$CaC_2+N_2=CaCN_2+C$$
$$CaCN_2+3H_2O=2NH_3+CaCO_3$$

The cost of ammonia from cyanamid, with power at $8 per horsepower-year in a plant to be constructed by the Government, would cost 1 to 2 cents per pound more than by the Haber process. On the other hand, royalties for using the cyanamid process would undoubtedly be less. The technical problems involved are understood by many engineers both in this country and abroad, the manufacture of calcium carbide and cyanamid being established in many plants, and the basic patents having only some four years more to run. Peculiarly favorable conditions exist for its installation in certain sections of the South. If a hydroelectric plant is to be installed by the United States Government, and the electrical power so de-

veloped must be used for the fixation of nitrogen, the cyanamid process has advantages over all other processes now developed and should be adopted as the best means of utilizing hydroelectric power for the fixation of nitrogen.

In Germany in 1913 there were produced 30,000 tons of cyanamid. The growth has not been so rapid as in the case of the Haber process, although the process has been subsidized by the German Government to assist in its development. However, the 1917 German production will be not far from 400,000 tons. The cyanamid interests in Germany have also endeavored to induce the German Government to establish a nitrogen monopoly which will insure the continuation of the cyanamid industry in Germany in competition with the Haber process and ammonium sulphate from coke ovens after the war. The German nitrate monopoly has not been established by the Reichstag chiefly owing to the opposition of the owners of the Haber patents.

Ground cyanamid is a very dusty, disagreeable product and in order to be used for fertilizer has to be treated with oil or by a special granulating process that controls the dust and enables the material to be more successfully used as a fertilizer. Cyanamid should be, and probably is, an excellent fertilizer if applied directly to the soil. It has not, however, found favor with American fertilizer manufacturers and is not well suited as an addition to the mixed fertilizer demanded by American farmers. It is, however, successfully used in Europe, where much cheaper labor enables the farmer to spread his fertilizer, if desirable, one constituent at a time. To meet the Government's requirements of 20,000 tons and 180,000 tons of nitric acid, through the medium of cyanamid, would require the continuous use of 11,000 horsepower and 99,000 horsepower, respectively.

If cyanamid is to be converted into the most popular form of fertilizer material, namely, ammonium sulphate, it would cost, approximately, 1 cent per pound to convert the nitrogen present into the form of ammonia before it could be absorbed to form sulphate. It is the necessity of converting the combined nitrogen into ammonia, if the cyanamid process is used as a source of nitric acid, that makes up a considerable portion of the difference in cost between cyanamid ammonia and Haber ammonia.

ADVANTAGES.

1. Most available method if hydroelectric power is to be used.
2. Moderate horsepower requirements.
3. Ready transportability.
4. Product salable in time of peace for fertilizer.

DISADVANTAGES.

1. Number of operations and plant installations required to produce nitric acid, viz, carbide, cyanamid, ammonia from cyanamid, ammonia oxidation, and nitric acid concentration.
2. Patents and processes controlled in America by one corporation.
3. Process an extremely dusty and disagreeable one, involving unpleasant conditions, if not hardships, on the labor.
4. Large labor factor involved.
5. Comparatively high cost.

By-Product Ammonia.

The nitrogen stored up through the medium of plant life of past ages as a constituent of bituminous coal is in part recovered as ammonia when bituminous coal is converted in by-product ovens into coke. This

source of ammonia is to-day the chief source of combined nitrogen in all countries, including Germany. Ammonia produced by the destructive distillation of coal when pure is the same as any other ammonia and can be readily oxidized to nitric acid.

The recovery and utilization of ammonia in by-product coal has been recognized by economists for decades to be one of the most important developments for conserving the wealth of the Nation. In Germany two-fifths of the coal used is carbonized in by-product coke ovens, and all of the coke produced is produced in plants fitted for the recovery of by-products, including ammonia. In this country less than one-tenth of the bituminous coal burned is coked in by-product ovens. Of the coke produced in America, over one-half is still produced in bee-hive ovens in which the gas, ammonia, and all other by-products are ruthlessly destroyed. There has been nevertheless a rapid increase in the installation and operation of by-product ovens and an increase in ammonia production that would not have been thought possible two years ago. By the end of the present year we will be producing at least 115,000 tons of ammonia per annum—an equivalent of 450,000 tons of ammonium sulphate. Six thousand tons of this ammonia in time of peace, or 55,000 tons in time of war, would meet the Nations' requirements of nitric acid for military purposes, as estimated by the War Department. The growth of our ammonia production from by-product coke has been extremely rapid and is still on the increase. More than fifty million dollars worth of by-product coke ovens have been contracted for within the past 12 or 13 months and are now completed or in process of erection.

The installation of the by-product coke process means a larger supply not only of ammonia but also of benzoltoluol, phenol, naphthalene, and other prod-

ucts absolutely essential for munitions purposes and required in time of peace for our present and future dyestuffs industry. Benzol, toluol, and phenol are only secondary in importance to an ample supply of nitric acid for war purposes.

The use of the by-product coke process also means the production of large quantities of gas for power purposes. Indeed, if the destructive distillation of coal is conducted in special producer-gas ovens the output of ammonia can be increased five to six fold, and power comparable with cheap hydroelectric power can be obtained at the same time. This method is now utilized in Germany on an immense scale for producing cheap power and increased ammonia output.

That bituminus coal used should be treated in by-product ovens is recognized the world over. It is becoming increasingly practicable to do this, and the consumption of coke for domestic purposes as well as for the production of iron and steel is rapidly increasing. The general use of coke instead of coal throughout the country would do away with the smoke nuisance and all of its concomitant loss to property. It would produce, besides other by-products, approximately 1,000,000 tons of ammonia in this country alone. The day is far off before this highly desirable result will be reached, but it should none the less be striven for. Already legislation abroad requires the use of coke instead of bituminous coal for certain industrial purposes. By-product coke ovens, however, can not be installed by the United States Government for the purpose of producing ammonia. The ammonia should be simply a by-product incidental to the production of coke for industrial purposes. Under war conditions, however, the output of ammonia from by-product coke ovens could, by Government regulation, be greatly increased. This has been accomplished in Germany, the by-product coke ovens furnishing Germany to-day with

over one-third of the nitrogen consumed in that country. Germany has had an increase from 100,000 tons to 154,000 tons of nitrogen from this source since the war began. The possibilities for an increase in America are much greater than in Germany.

Ammonia from by-product ovens has to be purified before it can be oxidized for nitric acid. The cost of purification is, however, very small and, where purification apparatus is installed at the original ammonia absorption plant, adds but a small fraction of a cent a pound to the cost of crude ammonia liquor.

The use of by-product ammonia for the production of nitric acid for munitions purposes has the great advantage that it is already available and that the plants, being situated in numerous parts of the country, could furnish ammonia to several small oxidizing plants. Accordingly, the country's source of munitions supply would not be at any one place and subject to capture and destruction.

The use of by-product ammonia has the great disadvantage that the present selling price of ammonia from by-product coke is high and, unless considerable price concessions could be obtained by the Government, it could not afford to utilize this source of raw material for nitric acid. The actual cost of pure ammonia, considered as a by-product from the coking of bituminous coal, is much less than by any other method now producing this substance.

Cyanide Process.

The cyanide process is not yet a commercial success and for that reason alone perhaps should not be included here. It has, however, such possibilities that I feel called upon to discuss it.

From a chemist's standpoint the process is to-day a success. There is no difficulty whatever in the chemical reactions. When sodium carbonate, ground coke, or carbon in any form in contact with finely divided

iron are heated to redness and nitrogen or even air passed through the mass, nitrogen in quantity is fixed as sodium cyanide. The reaction takes place readily. No power factor of any consequence is involved and it appears certain that if the mechanical difficulties are solved, nitrogen will be fixed in this form cheaper than by any other known synthetic process.

There are also large quantities of waste nitrogen available in connection with the sodium carbonate plants of the country where the sodium carbonate required would also be available, and there are large amounts of nitrogen that could be obtained without cost in a sufficiently pure condition at the wood-pulp plants using the sulfite process.

When the sodium cyanide is once formed it can be readily converted into ammonia as is the case with cyanamid, but the process has the advantage that in the conversion the sodium carbonate can be recovered to be used over again. The iron can also be repeatedly used in the process. Small installations are now working successfully in the country, but the mechanical difficulties of production on a large scale are yet to be solved. Four large American corporations are engaged on the problem with ample funds for its solution.

The process has the further advantage that it would also make cheaply available cyanide which is so greatly needed by our mining industries.

Nitric Acid from Ammonia.

All processes for the synthetic production of nitric acid, except the arc process, involve the oxidation of ammonia. The processes commercially in use involve the direct oxidation of ammonia gas in the presence of air in contact with metallic platinum. In Germany, according to the latest published figures, approximately 100,000 tons of nitric acid are annually produced through the Frank Caro process, which involves passing mixtures of ammonia and air through elec-

trically heated platinum nets of 80 to 100 mesh. The platinum is heated to a dull red heat and serves as a catalytic agent under whose influence the ammonia, instead of burning to nitrogen and water, as normally would be the case, causes the nitrogen to form nitric oxide.

In the Kaiser process, also used in Germany, the air is heated before its mixture with the ammonia, and under these conditions it is claimed that no electric heating of the platinum net is necessary. The Kaiser process does not appear to have reached any large commercial development.

The Landis process, installed in a small experimental plant at Warners, N. J., passes the gas downward through the net instead of upward, as is customary in the Frank Caro process, and, according to the Landis patents, cools the gases before they are allowed to come in contact with the net instead of heating them as is done in the Kaiser process. The platinum net process is also understood to be installed in a small plant in Long Island City and is being installed in Syracuse, N. Y., by the Semet-Solvay Co., in cooperation with the Bureau of Mines.

The Ostwald-Barton process first developed at Villevord, Belgium, and brought there to a commercial success at the time of the opening of the war, is now installed in two large plants—one at Angouleme, France, and the other at Dagenham, England.

The principle of the process is essentially that originally patented by Ostwald, but the catalyzer is disinctly different from that used by him although it consists of metallic platinum. The details of the preparation of this catalyzer are kept secret, but it is known to have a very small cross section and is placed at the end of a 60-millimeter tube so that the products of combustion passing through the tube heat the mixed ammonia and air by radiation as they approach the catalyzer. By this means no external heat is necessary.

The reaction when once started continues without interruption for weeks. It is simply necessary, by means of blowers, to force the mixture of ammonia and air through the catalyzer.

The present commercial efficiency and output by the Ostwald-Barton process is higher than by any other concerning which exact figures have been obtained. It is higher than the published figures for the Frank Caro process, but as figures for that process have been published only on a minimum basis, it is impossible to state whether as high an efficiency of conversion and capacity of catalyzer has been reached by that process as by the Ostwald-Barton.

The processes for the oxidation of ammonia are seemingly free from any complicated patent situation. The Europeans engaged in ammonia oxidation admit freely that they have no important patent rights to sell, but they claim that they have plans, specifications, and details of processes, the purchase of which would be cheaper than the necessary experimentation to work out the details.

By the oxidation of ammonia, nitric oxide gases are obtained of much higher concentration than those produced by the arc process. Accordingly, much less tower space is necessary for their absorption and much stronger acids can be directly obtained by concentration. Although in the arc process the concentration of 30 to 35 per cent nitric acid to strong acid is required, in the oxidation process on acid of 50 to 55 per cent strength is easily obtained directly from the towers, and the concentration thereof is accordingly a simpler matter.

Oxidation of Ammonia in Solution.

A method has been developed in Sweden, details of which are unknown, for the oxidation of ammonia or cyanamid direct to ammonium nitrate in solution. The ammonium nitrate can then be easily concen-

trated by evaporation and can be converted to nitric acid if desired. The process seems worthy of very careful consideration and will be in commercial operation this coming summer—a plant being now in process of erection near Gothenburg, Sweden. A second and much larger plant is also being erected near Berlin, Germany.

As cyanamid is not necessarily converted into ammonia, as any form of ammonia, such as Haber or coal-tar ammonia, can be directly used, and as no heating of any kind is required, it is claimed that this process will produce ammonium nitrate much cheaper than any other. It is particularly important because nitrate itself is becoming one of the most important of all explosives, and the many complicated reactions necessary for its manufacture would be avoided if this process becomes a commercial success, as the engineers engaged in its exploitation confidently expect. The fact that the German engineers have seen fit to install a large plant near Berlin speaks well for the probability of its successful application.

The Nitrogen Situation.

Without going into full details of the nitrogen situation in this preliminary report, a short summary of some of its most important features appears to be desirable. The subject will be treated at greater length and with definite data in the final report.

The present conditions are, of course, abnormal. Importations of sodium nitrate into Germany have been entirely cut off, and Germany consumed a large fraction of the output of the Chile mines before the war. The importations of sodium nitrate into the United States have doubled, owing to the tremendous amount of munitions being manufactured for export. The importations of sodium nitrate into the allied countries have also greatly increased, owing to war demands. The production of synthetic nitrogen in Germany and the

increase in the production of by-product nitrogen in Germany have much more than offset the lack of Chilean importations. The following summary of conditions in Germany, taken from the Frankfurter Handelsblatt of May 29, 1916, is significant.

German consumption of nitrogen, 1915.

	Metric tons.	
Sulphate of ammonia, 460,000 tons, equals	92,000	Nitrogen.
Norwegian nitrate of lime, 35,000 tons, equals	4,500	
Cyanamid, 30,000 tons, equals	6,000	
Ammonia—Haber process, 20,000 tons, equals	4,000	
Total	106,500	

	Metric tons
Plus nitrate of soda, 750,000 tons	116,000
Grand total	222,500
Grand total in tons of 2,000 pounds	245,000

German production of nitrogen, 1917.

	Metric tons
Sulphate of ammonia, 700,000 tons	140,000
Norwegian nitrate of lime	None.
Cyanamid, 400,000 tons	80,000
Ammonia—Haber process, 500,000 tons	100,000
Total	320,000
Total in tons of 2,000 pounds	352,000
Nitrate of soda	None.

In spite of having more than half of her nitrogen supplies cut off by the war, Germany has greatly increased her nitrogen output, increasing her own production of nitrate resources from 116,000 short tons to 352,000 short tons of nitrogen. This has been made necessary not simply or chiefly for war munitions but

largely for agricultural needs, Germany's population being dependent now on its own food supplies which in turn are greatly increased by nitrogenous fertilizer.

Conditions in the United States in case of a war which cuts us off from foreign countries would be far different. We are a food-exporting country and the larger part of our fertilizer is used on the cotton crop, the growth and exportation of which would be greatly curtailed. A comparatively small part of our fertilizer requirements are used on food crops, and being a food and cotton exporting Nation our nitrogen requirements for agricultural purposes would largely decrease instead of increase. Even in the case of the present war, which has increased foodstuffs exportation but decreased cotton production, the fertilizer consumption of the country has decreased rather than increased. This would be much more the case if our people were cut off entirely from food and cotton exportation.

In view of the fact that Germany has invested millions of dollars in synthetic nitrogen plants which will continue to produce synthetic nitrogen after the war; that Germany is producing more than twice the amount of combined nitrogen that she formerly imported in the form of Chilean saltpeter; that accordingly the German market for Chilean saltpeter will be essentially nonexistent after the war; that the present large American and allied consumption for munitions will cease; and that during the war the American production of ammonia from by-product coke ovens has increased to a point in excess of our apparent normal consumption, it seems certain that the price of combined nitrogen for industrial and agricultural purposes must greatly decrease when the war is over. This, I think, is recognized and expected by all of those engaged in the production of combined nitrogen.

In view of the facts above enumerated, it is evident at once that the peace-time requirements of the

Government for nitric acid could be supplied from coal-tar ammonia with little effect on the market for the material and practically no effect on the country's nitrogen resources. It seems equally certain that in the case of such a war by-product ammonia could furnish 180,000 tons of nitric acid per year for at least one or two years without seriously affecting the Nation's agriculture. This is particularly important when it is remembered that over 60 per cent of the nitrogenous material used in fertilizer, consisting of organic nitrogen from cottonseed meal, tankage, dried blood, etc., would not be decreased at all but would rather be increased through the cutting off of exports of cottonseed meal.

Furthermore, it is well known that several of our largest corporations are engaged in active plans for installing synthetic nitrogen plants of various kinds to meet their own industrial requirements and that in all probability the Haber process will enter into active industrial competition for our ammonia markets in American plants as soon as the war is over. Plants for the oxidation of ammonia can be quickly erected in crude form as they were erected and utilized in Germany, should the need arise.

I accordingly feel that no serious emergency problem confronts the United States that could not be met with reasonable celerity in time of war, and that our first problem, after securing a reasonable reserve of Chilean saltpeter, is to familiarize ourselves with the most efficient method for the oxidation of ammonia and to train the necessary men to construct and operate ammonia oxidation plants.

Cost of Nitric Acid.

The cost of nitric acid, per se, whether as weak nitric acid or as concentrated nitric acid, is lowest by the arc process with hydroelectric power delivered to the furnace at a cost of $10 per horsepower-year, or

less. The difficulties of its transportation, the large amount of power required, and other economic reasons, as already explained, make the arc process inapplicable to American conditions.

The cost of nitric acid obtained by the oxidation of pure ammonia is independent of the source of the ammonia and must therefore depend upon the cost of ammonia gas in the gas holders ready to be passed to the oxidizing apparatus.

Cost of Ammonia.

The cost of ammonia has at the present time no relation to its selling price. The actual cost of collecting, absorbing, and purifying ammonia from the gases developed by the destructive distillation of bituminous coal—in other words, the cost of ammonia considered as a by-product is less than by any other process. The selling price of by-product ammonia is entirely a question of competition with other nitrogenous products and has been fixed in the past almost wholly by the market price of sodium nitrate with which it enters into competition. Even should ammonia be placed on the market by the Haber process at a price as low as 4 cents per pound, by-product ammonia will still be sold in competition therewith at a profit to the producer. Its cost price is largely a matter of bookkeeping. Its selling price will in the future as in the past depend upon the competition of other sources of combined nitrogen. The Haber process can produce and is producing ammonia synthetically cheaper than any other synthetic process now industrially applied. The cyanamid process stands next in order.

If mechanical difficulties now confronting the cyanide process are solved, it will produce ammonia cheaper than either the Haber or the cyanamid process and in close competition with the actual costs of

saving by-product ammonia. The details of costs by all of the above methods will be considered in the final report.

SUMMARY OF CONCLUSIONS.

I. The Government should obtain its nitric acid by the oxidation of ammonia. It should begin the erection of an ammonia-oxidation plant of moderate capacity at an early date in order to train men and obtain experience in the most efficient method of procedure.

II. The Government should proceed slowly in the matter of the erection of plants for the production of ammonia, as developments in the cyanide process and the availability of the Haber process may render valueless within a short time any large expenditure for the production of cyanamid. This is doubly true in view of the fact that present appropriations are not nearly sufficient to install water power and erect the nitrogen fixation plants necessary to meet the Government requirements as estimated by the Ordnance Department.

The adoption of the above procedure involves:

1. Purchase by the Government of a reserve supply of sodium nitrate of at least 200,000 tons.

2. The purchase of ammonia on the open market.

3. The reservation of a supply of platinum. As platinum is an essential for the oxidation of ammonia and of the utmost importance in the production of sulfuric acid and other supplies required for munitions; as there are no platinum reserves in the United States save a small amount obtained in the electrolytic purification of copper, gold, and silver ores; and as platinum is one of the precious metals with a value above that of gold, I especially recommend that legislation be asked which will conserve the platinum obtained each year by the United States mints, putting

it in the vaults if necessary and issuing Treasury notes against it as in the case of gold. Platinum would then be available for immediate use in case of need for the production of nitric acid by the oxidation of ammonia and for the production of sulfuric acid so important in case of war. This platinum would be available without cost to the Government and could, if desired, be used as a reserve for circulation, because even if applied to the purposes above mentioned there would be comparatively little actual loss of the metal itself.

4. The construction of a hydroelectric plant only if the arc or cyanamid process is to be used. The oxidation of ammonia requires very little power and the Haber, cyanide, and by-product ammonia processes are all independent of cheap power cost. The development of water power, however, can not but be of benefit to the country even if it is not used for the fixation of nitrogen.

I seriously doubt whether hydroelectric power will be necessary or desirable three years from now for the most efficient process of fixing nitrogen, and accordingly I deem it unwise to install such hydroelectric power at great cost with the sole purpose of producing nitrogen. If, however, such water power can be utilized by the Government in the production of certain ferro alloys absolutely essential for ordnance and other munitions; can be sold to commercial companies who will take upon themselves the financial risk involved in the erection of plants for nitrogen fixation, under guarantee of cheap ammonia to the Government; or can be sold during peace times to companies requiring power for purposes which would allow instant requisition of the power by the Government in time of war without handicapping the supplies of other needed war material, the development of such hydroelectric power would be highly desirable.

REPORT ON THE NITROGEN INDUSTRY.
By CHARLES L. PARSONS, Chief Chemist.

BUREAU OF MINES, DEPARTMENT OF THE INTERIOR,
April 30, 1917.

Brig. Gen. WILLIAM CROZIER,
Chief of Ordnance, War Department.

SIR: In my preliminary report of January 27 I recommended:

I. That the Government should obtain its nitric acid by the oxidation of ammonia and should shortly begin the erection of an ammonia oxidation plant of moderate capacity to train men and to obtain experience in the most efficient method of procedure.

II. That the Government should proceed slowly in the matter of the erection of plants for the production of ammonia, as "development in the cyanide process and the availability of the Haber process may render valueless within a short time any large expenditure for the production of cyanamid."

In connection with these recommendations, I further recommended that the Government purchase a reserve supply of sodium nitrate of at least 200,000 tons, and that arrangements be made for the reservation of a supply of platinum. These last two recommendations have already been adopted and are progressing toward fulfillment.

A small plant for the oxidation of ammonia erected at Syracuse, N. Y., is progressing successfully; another experimental oxidation plant at Laurel Hill, L. I., has developed other new features. At Syracuse, two new forms of apparatus for the oxidation of ammonia are now being tried out—one of which, if successful, will do away entirely with the use of platinum in the production of nitric acid. Whether or not this will be accomplished is doubtful, but desirable.

The main point is that the preliminary arrangement for the plant for the exidation of ammonia is progressing rapidly and satisfactorily.

At the time my preliminary report was written, I felt even more confidently than I was willing to express that the Haber process and cyanide process would be shortly available for the use of this country and would largely, if not entirely, displace the arc and cyanamid processes, which require large electrical development and a correspondingly large expenditure.

Development has been rapid during the last two months. A synthetic ammonia process and a cyanide process have now reached a state of development where I am prepared to recommend definite action by the Government.

General Chemical Company Process.

During the past four years, the General Chemical Co., working on the basis that it should be possible to develop conditions under which the synthetic production of ammonia by the direct combination of nitrogen and hydrogen should take place at lower pressures than those deemed necessary by the Haber patents has achieved success. This process has been in successful operation on a large experimental scale with several small units for ammonia production and one unit larger than those supposed to be used in Germany.

The General Chemical Co. has also developed and brought to a commercial basis the production of a mixture of nitrogen and hydrogen from coke, air, and water which will yield hydrogen at a cost lower than heretofore obtained in this country and probably lower than that obtained in Germany.

Complete engineering plans have been prepared and bids obtained on the main items of construction so that the erection of a plant for the synthetic production of ammonia can be proceeded with without de-

lay. The company itself would have already had a plant in operation save for the present high construction costs and other difficulties incident to operations at the present time.

The General Chemical Co. feels that, so far as its own relations to the nitrogen industry are concerned, sound business policy would call for delay in the construction of a plant until the war is over. Many of the difficulties facing the General Chemical Co., however, do not apply to the Government, such as inability to secure the raw material and quick mechanical construction.

For some months I have known that the General Chemical Co. was working on this synthetic ammonia process, but only recently has it been possible to obtain detailed information. The outbreak of the war convinced the officials of the General Chemical Co., headed by Dr. William H. Nichols, chairman of the board of directors, that they should place at the disposal of the Government the results of their investigations. Accordingly, when the Bureau of Mines requested information regarding the present status of their operations, a preliminary conference was arranged in Washington on April 4. As a result of the information then obtained, arrangements were made for a meeting in your office with representatives of the General Chemical Co. on April 14.

After this conference Dr. Nichols offered the free use of the process devised by the General Chemical Co. to the Government and the full help of the General Chemical Co. in installing and operating the process. Arrangements were made for a visit to the experimental plant of the General Chemical Co. and for a further conference in New York.

On April 20 Col. C. B. Wheeler, Col. C. C. Keller, Dr. A. A. Noyes, and myself visited the plant and saw it in operation. On the same day a meeting was held

at the office of the General Chemical Co., at which the plans for the proposed plant were exhibited and a proposed agreement between the General Chemical Co. and the Government handed to me for delivery to you. The original of this offer is now in your hands and a copy is attached hereto. Estimates on construction and on operation were also submitted.

These estimates are presented in detail under the promise, however, that they would be carefully guarded. Detailed estimates are attached both for a plant of 60,000 pounds of ammonia per day and for a smaller plant of 15,000 pounds per day.

It is estimated—I believe conservatively—that even under present conditions a 30 ton per day plant can be built for an expenditure of $3,000,000 and can be operated at a cost of not to exceed 4 cents per pound of ammonia produced, allowing $5 per ton of product for repairs and 12½ per cent of the cost of the plant for interest and depreciation. It is believed that the charges for repairs, interest, and depreciation are excessive as, together, they comprise more than 50 per cent of the total cost of the ammonia production. In the estimates $3 per ton of product is allowed for general expenses and overhead charges.

It is estimated that a smaller plant of at least 7½ tons per day capacity can be built at the present time for approximately $1,100,000, including land and buildings. Such a plant would yield 2,700 tons of ammonia per year—equivalent to 8,700 tons of 96 per cent nitric acid, assuming 85 per cent recovery. Such a plant would require about 500 horsepower.

After examining the process in some detail and giving great weight to the standing of the General Chemical Co. and to the statements of its officers and engineers—than whom there are none better fitted to judge of the situation—I recommend the following:

That an initial plant to produce 60,000 pounds of ammonia per day be immediately constructed.

To this end I recommend:

1. That the War Department set aside the sum of $3,500,000.

2. That an agreement with the General Chemical Co. be consummated whereby the process be accepted by the Government for its own use, together with the services of the requisite engineers already trained by the General Chemical Co. for use in construction; and

3. That an agreement be reached whereby a definite, or at least a maximum, royalty per ton of fixed nitrogen produced be paid to the General Chemical Co. if sold for nongovernment use.

4. That this initial plant be constructed at some point to be selected by the War Department in southwest Virginia, or adjoining territory in West Virginia, reasonably near to the sulphur, sulphuric acid, and coal supplies of that region and so situated near to plenty of good water that an ammonia oxidation plant and a powder plant may later be erected near-by.

Cyanide Process.

The cyanide process, too, has greatly developed in the last few months as anticipated in my preliminary report.

Since that report appeared the scientific details of the process have been published by Prof. J. E. Bucher in the Journal of Industrial and Engineering Chemistry, 9 (1917), 233. The president of the Nitrogen Products Co., Mr. Edward E. Arnold, who six months ago declined to go on record as to the future of the process, now unequivocally states that he considers the process a certain commercial success and a probable competitor with any other process for the production of fixed nitrogen.

The Nitrogen Products Co. is operating two experimental plants by the cyanide process—one at Salt-

ville, Va., in a coal-fired furnace, and one at Niagara Falls in an electric furnace. Col. Wheeler, of the Ordnance Department, and Dr. J. K. Clement (on my behalf for the Bureau of Mines), visited the Saltville plant on April 6. Col. C. B. Wheeler, Col. C. C. Keller, Dr. A. A. Noyes, and myself visited the plant at Niagara in company with Mr. Arnold on Saturday, April 21.

Estimates of the cost of fixed nitrogen by the cyanide process presented for the use of the committee by the Nitrogen Products Co. are attached. At my request, Mr. Arnold, president of the company, also submitted a proposal for the use of the cyanide process by the Government. The offer made by the Nitrogen Products Co. is essentially the same as that made by the General Chemical Co.

The process is offered free to the Government for its own use to any extent, both in time of peace and in time of war.

After careful examination of this process, I am not convinced that it has yet reached a point where plant installation should begin, as I believe a few months experimentation will add greatly to the efficiency of the furnace proposed.

It is my belief, however, that the process will become an important factor in the world's nitrogen market; that it may become a strong competitor even of other processes on account of the simplicity of its operations and the low cost of plant construction; and that a furnace which I believe I see in embryo can be developed which will be much more efficient than either of those now used.

The process is so promising that I recommend:

1. That active experimentation on a large scale be conducted.

2. That a sum not to exceed $200,000 be set aside for this purpose.

With this amount available I feel confident that this process can be put upon a commercial basis; that it will become a real competitor in the production of ammonia for nitric acid and of nitrogenous material for fertilizer.

I believe this investigation should begin without delay and that as soon as practicable a small experimental plant be erected at Saltville, Va., where a large supply of nitrogen, soda, and coal is available. The present plant of the Nitrogen Products Co. can probably be utilized in connection therewith.

SUMMARY OF RECOMMENDATIONS.

I. That $3,500,000 be made available to build an initial plant which will produce 60,000 pounds of ammonia per day by the synthetic ammonia process, as offered by the General Chemical Co.

II. That the offer of the General Chemical Co. be accepted with some subsidiary arrangement whereby a maximum royalty per ton of nitrogen, when the product is to be used for commercial purposes, shall be inserted.

III. That the construction of the initial plant be started at once at some point to be selected by the War Department in southwest Virginia or adjoining territory in West Virginia, reasonably near to the sulphur, sulphuric acid, and coal supplies of that region. The plant should be so situated that it is near to plenty of good water and that the land is available for the later erection of an ammonia oxidation and nitric acid concentration plant. It should be so located that a powder plant may be later erected near-by.

IV. That a sum not to exceed $200,000 be set aside for active experimentation on a large scale on the cyanide process.

V. That experimentation on the cyanide process

be conducted at Saltville, Va., where nitrogen, soda, and coal are available and where the present plant of the Nitrogen Products Co. may be studied and utilized.

ESTIMATES ON CONSTRUCTION AND OPERATING COSTS.

In order that the recomemndations made above may be considered in comparison with the older processes now operating on a large scale, I beg to submit herewith a table summarizing confidential data obtained from books of many companies bearing upon the cost of nitrogen production.

Data per ton of nitrogen by the arc, cyanamid, Haber, and General Chemical Co. processes.

	Arc.	Cyanamid.	Haber.	General Chemical.[1]
Product	35 per cent HNO_3.	NH_3	NH_3	NH_3
Power required	10.5	2.2	0.2	0.2.
Investment	[4] $1,410	[5] $440	$340	$300.
Operating costs [3]	$170	[6] 150	$119	$97.
Product	96 per cent HNO_3.	96 per cent HNO_3.	96 per cent HNO_3.	96 per cent HNO_3.
Power	10.8	2.3	0.3	0.3.
Investment [5]	$1,550	$670	$570	$530.
Operating costs [4]	$220	$270	$239	$217.

[1] Estimates on General Chemical Co. process are based on present war time construction costs. All others on normal prices.

[2] Amortization for cyanamid as charged by operating companies. Amortization for Haber 20 per cent of plant cost for repairs, interest, depreciation. Amortization for arc and modified Haber 12½ per cent interest and depreciation. $5 per ton of product for repairs.

[3] Except for arc process, includes ammonia plant as given A, power additional, $10; oxidation and absorption, $140; concentration, $40; steam plant, $40.

[4] Except for arc process, includes ammonia costs as given; oxidation, $50; concentration, $70. No allowance made for unoxidized ammonia.

[5] Power plant investment reckoned at $100 per horsepower.

[6] Cyanamid production $122, ammonia from cyanamid $28, total $150.

DEFENDANT'S EXHIBIT No. 178.

General Chemical Co.,
New York, N. Y., June 5, 1917.

To the President:

The Committee on Nitrate Supply, under section 124 of the "Act for making a further and more effectual provision for national defense and for other purposes," has requested the General Chemical Co. to state the terms upon which said company would grant to the Government the right to use its processes, which have been exhibited to said committee, in the "production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers."

In compliance with said request the General Chemical Co. begs to submit the following tender:

The General Chemical Co. hereby places at the disposal of the President, for the purposes aforesaid, and grants to the Government of the United States the use of its nitrogen and hydrogen to form ammonia, and exemplified in one or more of its United States patents, Nos. 1,141,947 and 1,141,948, both of June 8, 1915; 1,143,363, of June 15, 1915; 1,151,537, of August 24, 1915, and 1,159,364, and 1,159,365, both of November 9, 1915; and such other patents as may hereafter be granted; and the recovery of such ammonia as liquefied ammonia or as a salt, such as ammonium chloride, sulphate, or nitrate, and, further, its process of catalytically converting ammonia and oxygen into nitric acid and of recovering such nitric acid as a strong acid or as a nitrate such as ammonium or sodium nitrate and on whose patentable features final action has not yet been taken, in so far only as the Government shall desire to use the same in its own works for the production of munitions of war and

products useful in the manufacture of fertilizers, upon the following terms and conditions:

1. In so far as the Government shall see fit to employ said processes or apparatus, or any of them, in the manufacture of products to be used exclusively for munitions of war, no compensation by way of royalty or otherwise will be asked or received by the General Chemical Co.

2. In so far as the Government shall see fit to employ the said processes or apparatus, or any of them, in the manufacture of products to be used for fertilizers, the Government shall pay to the General Chemical Co. a royalty for such use. The royalty so to be paid shall be based upon the nitrogen contents of the material produced for fertilizer purposes and shall be at the rate of $5 for each ton of 2,000 pounds of fixed nitrogen in whatever form combined, and shall be payable quarterly, until the 9th day of November, 1932, and thereafter until the expiration of all patents involving any substantial feature of the process or apparatus.

3. The General Chemical Co. hereby places at the disposal of the President the entire services of those members of its staff under whose immediate supervision its said processes have been brought to the present stage of development, upon the sole condition that the Government shall assume and discharge all obligations which the company is now under with respect to the compensation of said employees, together with the necessary increase of their expense, so long as the Government shall avail itself of their services.

4. If this tender shall be accepted, the General Chemical Co. hereby undertakes forthwith to communicate to the designated experts for the Government all of its knowledge and discoveries pertaining to the said processes and apparatus, whether or not the same

shall be the subject of patents, and from time to time thereafter, so long as the Government shall continue the use of said processes, to communicate all further improvements promptly as they shall come to the knowledge of the company and without further charge for the use thereof, within and subject to the limitations before expressed. And reciprocally, it is understood that all modifications and improvements in the processes or apparatus, which the Government shall discover or employ, shall be at the disposal of the General Chemical Co. and its licensees, if any, for use in its or their own works, and that all such modifications and improvements shall be freely exhibited upon request to the representatives of the General Chemical Co.

5. It is understood that for all purposes of this agreement and generally so far as concerns the use of said processes, or any part thereof, by the Government, its agents or other parties claiming under it, it and they shall at all times acknowledge and recognize the General Chemical Co. as the sole owner of said processes and of the exclusive right to use the same subject only to the rights granted to the Government pursuant to this tender, and shall, so far as practicable, exclude the public from all works in which said processes shall be employed, and generally, shall use all reasonable means to preserve said rights unimpaired.

Respectfully submitted by the General Chemical Co.

W. H. NICHOLLS,
Chairman of the Board.
JNO. A. MARTIN,
Secretary.

Accepted on behalf of the President, July 14, 1917.

NEWTON D. BAKER.

DEFENDANT'S EXHIBITS Nos. 179 to 237, Inclusive.

U. S. Patents Produced by Dr. Charles L. Parsons.
(For copies of patents see Patent Exhibit Book.)

Group 1.

Manufacture and Purification of Hydrogen.

Exhibit No.	*Patent No.*	*Date*
179	1,196,101	Aug. 29, 1916
180	1,102,716	July 7, 1914
181	1,113,096	Oct. 6, 1914
182	1,113,097	Oct. 6. 1914
183	1,115,776	Nov. 3, 1914
184	1,126,371	Jan. 26, 1915
185	1,128,804	Feb. 16, 1915
186	1,133,087	Mar. 23, 1915
187	1,157,669	Oct. 26, 1915
188	1,200,805	Oct. 10, 1916
189	1,207,968	Dec. 12, 1916
190	1,286,650	Dec. 3, 1918
191	1,301,151	Apr. 22, 1919
192	1,330,772	Feb. 10, 1920

Group 2.

Catalysts for Ammonia Synthesis.

193	971,501	Sep. 27, 1910
194	999,025	July 25, 1911
195	1,053,951	Feb. 18, 1913
196	1,053,952	Feb 18, 1913
197	1,068,966	July 29, 1913
198	1,068,967	July 29, 1913
199	1,068,968	July 29, 1913
200	1,068,969	July 29, 1913
201	1,083,585	Jan. 6, 1914

Exhibit No.	*Patent No.*	*Date*
202	1,094,194	Apr. 21, 1914
203	1,118,628	Nov. 24, 1914
204	1,128,843	Feb. 16, 1915
205	1,148,570	Aug. 3, 1915
206	1,149,510	Aug. 10, 1915
207	1,152,930	Sept. 7, 1915
208	1,158,167	Oct. 26, 1915
209	1,225,755	May 15, 1917

GROUP 3.

PROCESSES FOR SYNTHESIS OF AMMONIA.

210	1,006,206	Oct. 17, 1911
211	1,202,995	Oct. 31, 1916
212	1,216,059	Feb. 13, 1917
213	1,243,382	Oct. 16, 1917
214	1,244,580	Oct. 30, 1917
215	1,386,760	Aug. 9, 1921

GROUP 4.

PATENTS ON ENGINEERING FEATURES OF PROCESS FOR SYNTHESIS OF AMMONIA.

216	1,075,085	Oct. 7, 1913
217	1,077,034	Oct. 28, 1913
218	1,086,130	Feb. 3, 1914
219	1,188,530	June 27, 1916

GROUP 5.

PATENTS ON OXYDATION OF AMMONIA.

220	1,094,182	Apr. 21, 1914
221	1,207,706	Dec. 12, 1916
222	1,207,707	Dec. 12, 1916
223	1,207,708	Dec 12, 1916
224	1,211,394	Jan. 9, 1917
225	1,379,387	May 24, 1921

GROUP 6.

PATENTS ON FERTILIZER AND OTHER METHODS OF UTILIZING AMMONIA.

Exhibit No.	*Patent No.*	*Date*
226	1,063,007	May 27, 1913
227	1,091,234	Mar. 24, 1914
228	1,106,919	Aug. 11, 1914
229	1,133,086	Mar. 23, 1915
230	1,173,550	Feb. 29, 1916
231	1,200,806	Oct. 10, 1916
232	1,211,393	Jan. 9, 1917
233	1,261,900	Apr. 9, 1918
234	1,274,503	Aug. 6, 1918
235	1,292,019	Jan. 21, 1919
236	1,369,383	Feb. 22, 1921
237	1,344,673	June 29 1920

DEFENDANT'S EXHIBIT No. 238.

French Text of Report to Chamber of Deputies, Twelfth Legislature Extraordinary Session, 1922, Re, Bill relating to the Approval and powers for granting an agreement for the purpose of manufacturing Synthetic Ammonia.

[French text not printed.]

DEFENDANT'S EXHIBIT No. 238-A.

Translation of Defendant's Exhibit No. 238.

No. 5203

CHAMBER OF DEPUTIES

TWELFTH LEGISLATURE

EXTRAORDINARY SESSION 1922.

Supplement to report of the first meeting on Dec. 6, 1922.

Report

made

In the Name of the Commission of Finances* Charged With Examining the Bill Relating to the Approval and Powers for Granting an Agreement for the Purpose of Manufacturing Synthetic Ammonia.

By: Mr. Charles Leboucq,
Deputy.

Gentlemen:

Before approaching the study of the serious problem which is submitted to us it is necessary to consider several general principles and certain statistics.

In agriculture two kinds of fertilizer are used:

Organic fertilizer;

Mineral fertilizer.

The organic fertilizers are divided into vegetable, animal and mixed.

Mineral fertilizers into nitrogenous, phosphate, potassium and compounds.

The characteristic of nitrogenous fertilizers—the only ones with which we are concerned here—is that they are very soluble and very rapidly assimilated by plants. We will discuss them more fully later on.

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*This Commission is composed of Messrs. Adrien Dariac, President; Renard, Vincent Auriol, Georges Ancel, Emmanuel Brousse, Vice-presidents; Noblemaire, Calary de Lamaziere, Pierre Rameil, d'Aubigny, Pierre Robert, de Tinguy du Pouet, secretaries; Leon Archimbaud, Leon Barety, de Baudry d'Asson, Leon Blum, Boissard, Bokanowski, Bonnevay, Boilloux-Lafont, Georges Burea, Paul de Cassagnac, de Chassaigne-Goyon, Victor Constant (Haute-Loire), Defos du Rau, Charles Dumont, Dutreil, Even (Cotes-du-Nord), Edouard Eumond (Gironde), Andre Fallieres, Herriot, Isaac, Klotz, Ernest Lafont (Loire), Landry Lebas, Charles Leboucq, Lugol, Louis Marin, Prevet, Queuille, de Rodez Benzvent, Robert Serot, Alexandre Varenne.

Consumption of Nitrogenous Fertilizers before the War

What was the *annual consumption* of nitrogenous fertilizers in France before the war?

	Total Tonnage	*Tonnage of Nitrogen*
Sodium Nitrate	300,000	45,000
Ammonium Sulphate	100,000	20,000
Crude Cyanamide Calcium nitrate	30,000	3,500
Various organic fertilizers	100,000	4,500
Total		73,000

73,000 tons of nitrogen, the greater part of which (90%), is used in the form of sodium nitrate and ammonium sulphate.

Source of these fertilizers

1.—French Production.

	Tons	*Corresponding Nitrogen Tons*
Sodium Nitrate	None	0
Ammonium sulphate	75,000	15,000
Crude Cyanamide Calcium nitrate	15,000	1,750
Organic fertilizer	50,000	2,250
Total		19,000

II.—Importation.

	Tons	*Corresponding Nitrogen Tons*
Sodium Nitrate	300,000 (Chile)	45,000
Ammonium sulphate	25,000 (England)	5,000
Crude)		
Cyanamide)	15,000	1,750
Calcium nitrate)		
Organic Fertilizers	50,000	2,250
Total		54,000

VALUE OF IMPORTATIONS

	In 1913	Now
Sodium Nitrate (Chile):		
300,000 tons at 250 francs	75,000,000 fr. @ 750 fr.	225,000,000 fr.
Ammonium sulphate (England):		
25,000 tons at 330 francs	8,000,000 fr. @ 950 fr.	23,000,000 fr.
Total	83,000,000 fr.	248,000,000 fr.

French production of ammonium sulphate was consumed as follows:

Coke ovens	37,500 tons
Gas plants	22,500 "
Night soil	12,500 "
Sundries	2,500 "
Total	75,000 tons, or nitrogen: 15,000 tons.

This production fell at the time of the treaty of peace to 45,000 tons, wherefore the clause imposing on Germany the duty of delivering 30,000 tons for three years in compensation; these deliveries will cease in May 1923. At present, French production has increased again to 55,000 tons, or 11,000 tons of nitrogen.

Plan for Re-stocking with Nitrogenous Fertilizers (without Importation)

We have just seen that the consumption of nitrogen was 73,000 tons before the war.

We must now face the question of consumption in Alsace and Lorraine. It is also indispensable, as we shall see, for us to instruct our cultivators in the more extensive use of nitrogenous fertilizers. It is necessary for these reasons to arrange for an increase of about 50% in consumption which will bring the consumption of the future up to 110,000 tons of nitrogen. A definite policy, methodical propaganda entrusted to professional organizations can increase this amount by 15,000 to 20,000 tons or 100,000 to 200,000 tons in ten years.

Now, our present production is:

	Nitrogen
Ammonium sulphate (coke ovens, gas plants, night soil, etc.) 55,000 tons	
75,000 with German deliveries, or	15,000 tons
Crude, Cyanamide, calcium nitrate, 15,000 tons, or	1,800
Organic materials, 50,000 tons, or	2,200
Total	19,000 tons Nitrogen

The problem therefore consists in achieving without delay an annual production of:

110,000—19,000—91,000 tons of Nitrogen

The Solution?

The program *in course of execution* promises us for a future not far distant:

1. *In cyanamide.*—140,000 tons, or 28,000 tons of Nitrogen used as follows:

	Tons	*Or Nitrogen Tons*
Plants of the Societe des produits azotes	40,000	8,000
" " " Compagnie d' electricite industrielle	30,000	6,000
" " " Societe des Usines Fredet	30,000	6,000
" " Lannemezan (rented to the Societe des produits azotes)	40,000	8,000
	140,000	28,000

The first three plants are running, the fourth (Lannemezan) is in course of construction.

2. *Arc processes and others.*—2,000 tons (estimated figure), at the Toulouse plant, now shut down, belonging to the Societe norvegienne de l'azote.

Or in all, 30,000 tons, which, added to the 15,000 tons of ammonium sulphate which we are already producing (together with the deliveries of the German supplies), will yield us 45,000 kilos of Nitrogen.

65,000 tons still remain to be manufactured.

If the plant of Toulouse, which we will discuss later, furnishes us anually with 36,000 tons, there still remain 30,000 tons in round numbers to distribute among the other manufacturing plants.

These 30,000 tons will have to be requested:

Either from the plants producing ammonium sulphate or ammonium nitrate by one of the Claude, Casale, etc. processes;

Or from the coke ovens which will have to be constructed in sufficient number to distil a large quantity of oil (12 kilogs of ammonium sulphate per ton);

Or from the cyanamide, nitrate, etc. plants constructed or to be constructed.

But we have stated only the needs of peace times. In times of war we would need 100,000 tons more for the manufacture of powder.

Furthermore, it is probable that by the time the Toulouse plant is running, the propaganda of the professional organizations will have increased the amount of our annual needs to about 110,000 tons.

From these figures and before any examination of the problem we are going to study, we see that there is need for all our initiative in the market for nitrogen. Let us hope that our concerted efforts stimulated by competition will soon permit us to make up our enormous deficiency and release us from the burdensome importations of both sodium nitrate from Chile and German suphate[1].

How shall we attain this end?

The bill which is submitted to you, with the amendments of your Commission, will help us to approach our goal very nearly, we hope.

Chapter I

General Considerations

Nitrogen

For a long time Nitrogen has been considered an inert element and without chemical affinities; hence its name of azoe.

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[1] At present Germany does not export ammonium sulphate beyond 30,000 tons which she delivers to us (Part VIII, Reparations, supplement V, paragraph 8, Treaty of Peace). But it will not be long before she exceeds this production; for at present her plants are producing 375,000 tons of nitrogen per year; the needs of German agriculture are, therefore, sure to be supplied from now on.

The world market for nitrogen, dominated until now by the market for sodium nitrate in London, will soon be ruled by that of German sulphate.

Who could possibly have foreseen the role which it would play in the life of a nation?

It is an element forming a constituent of albuminous substances, we know, it is true, which enters into the composition of all organic tissues, animal and vegetable; it is subject to incessant and important exchanges between living matter, animal or vegetable, and the inorganic medium in which this matter is born, develops and dies.

But the reactions of the atmosphere—that inexhaustible reservoir of at least four-fifths of free nitrogen—how shall we grasp them and learn about them?

For a long time we were ignorant of them; and for a long time we believed in two kinds of nitrogen: one, indifferent to life and serving only to dilute the oxygen of the air; the other, a vehicle and agent of all vital transformations.

A day came when some scientific investigations due to a large extent to our French scholars (Schloesing and Muntz, Berthelot), determined how the nitrogen of the air passes into inorganic compounds, then into living matter, and inversely, in infinite cycles: the fact of its reputation for passivity and inertness was justified.

The Cycle of Nitrogen in Nature

Man and animals make no exchange of nitrogen with the atmosphere; oxygen alone enters into the phenomena of respiration; it is by the intermediary agency of the vegetables on which they live, either directly or through the agency of the substance of other animals, that they assimilate nitrogen.

The question goes back, therefore, to the assimilation of nitrogen by vegetables.

Now, it is from the soil that plants draw the nitrogen, in the form of very dilute solutions of nitrates, which is necessary to the formation of the albuminous

substances which enter into the constitution of their tissues.

By what miracle is vegetation able to perpetuate itself? Nitrogen compounds exist in the soil only in the smallest proportions. How will the soil re-stock itself with the nitrogen which the vegetation has exhausted.

There are the putrefaction products of animals and their waste products, as well as the putrefaction of vegetables which play their part in supplying the soil with nitrogen. Decay due to bacteria furnishes the soil with nitrogen principally in the form of ammonia. Ammonia is transformed into nitrites then into nitrates by the oxidizing action of special bacteria which exists in the soil. Then the cycle begins over again.

In the course of this cycle there are produced losses of different origin, especially as a result of the return of free nitrogen to the atmosphere in accordance with certain reactions. To compensate these losses nature works other phenomena.

Certain bacteria which live on the roots of certain plants (leguminous) fix atmospheric nitrogen directly. Furthermore, the electric phenomena which take place in the atmosphere cause the combination of nitrogen and oxygen in the form of nitrites which we find in rain water.

The action of electric phenomena presents, as we shall see later on, considerable interest in connection with the synthesis of nitrogenous products; but it is the bacterial fixation of atmospheric nitrogen which permits nature when left to itself to equalize its budget of nitrogen.

Intensive Cultivation and the Necessity of Resorting to the Reserves of Combined Nitrogen.

The unceasing increase in the density of the population in the civilized countries has obliged man to cultivate intensively the lands of limited area which he has at his disposal for the production of vegetables required for his nourishment.

The borrowing of nitrogen from the soil has therefore become very much larger; the means of restitution provided by nature have shown themselves to be insufficient especially in the case of cultivating plants on which the bacteria fixing atmospheric nitrogen do not develop (Cereals for instance). Therefore, it is our duty to consider the question of furnishing the soil artificially with nitrogenous substances in order to avoid the progressive impoverishment and sterility of the soil.

For a long time manure was found satisfactory, which is only a suitable redistribution of nitrogenous products resulting from the decomposition of animal and vegetable matters.

But the production of this material was in itself insufficient: hence the idea of filling the needs with the reserves of combined nitrogen accumulated in certain places in the world during past geologic epochs.

The World Reserves of Combined Nitrogen.

Two classes of Combined Nitrogen Reserves are particularly important.

One of these consists of the mineral deposits of nitrate, the most important of which are in Chile, which are also the only ones practically exploitable. Recourse to this source is economically disadvantageous for any countries which, like ours, possess no deposits

of nitrate, since it necessitates the exportation of gold; moreover, it is possible to obtain this nitrate only upon condition that the importing country has the freedom of the seas and there is the danger which manifested itself in so acute a manner at certain periods during the last war. In addition this reserve is not inexhaustible. However, that may be, France consumed before the war about 300,000 tons of Chilean nitrate per year, corresponding to 50,000 tons of nitrogen given to the soil as fertilizer.

Oil also constitutes a very important reserve for combined nitrogen, which can be collected in the form of ammonia when oil is distilled to transform it into coke; at the same time there is produced combustible gas (illuminating gas or the like) and large quantities of benzol (five kilos per ton of distilled oil) used for fuel. In practice about 2.400 kilograms of nitrogen in the form of ammonia are obtained (giving twelve kilograms of ammonium sulphate) per ton of distilled oil.

Oil distillation furnished to France before the war 12,000 tons of nitrogen per year, or 60,000 tons of amonium sulphate used for fertilizer.

It would be very desirable, and the question is at present the object of close study, to see France develop oil distillation; for the use of crude oil as fuel causes a veritable squandering of national resources, and all progress in this direction will lead to improvement in our disposal of fuel, as well as to the development of the national resources of nitrogen.

If, instead of burning 20,000,000 tons of oil per year without preliminary treatment, we distill and transform into coke this quantity which represents one-third of the total quantity of oil consumed annually before the war, we would obtain from this source 48,000 tons of nitrogen per year, or 240,000

tons of amonium sulphate. (It is not believed possible to exceed this quantity except after a long period of time).

It is not lacking in interest to recall that Germany at present obtains 100,000 tons of nitrogen per year from the distillation of oil, or 500,000 tons of ammonium sulphate.

The Nitrogen Needs of French Agriculture.

We have seen that in 1913 France consumed in the form of nitrogenous fertilizers 73,000 tons of nitrogen, the largest part of which (90%) was in the form of the nitrogen of sodium nitrate and ammonium sulphate.

During the same period Germany used in the form of fertilizers, 215,000 tons of nitrogen for a cultivated area of the same extent, or about three times more per hectar (10,000 sq. meters or 2.471 acres); the use per cultivated hectar was much greater still in Belgium and in the Netherlands.

This slight use of nitrogenous fertilizers in France is one of the principal causes of the insufficiency of yields obtained, compared with those which have been quoted in other countries for lands of even inferior agricultural value.

We have, therefore, a strong economic interest in developing the use of nitrogenous fertilizers in France. Nitrogen has been called appropriately "the bread of agriculture." Even if we rise only very little above the present parsimony, we would have to take into account the consumption of Alsace and Lorraine, and expect an increase of at least 50% over the pre-war figure, or a consumption of at least 110,000 tons of nitrogen. These calculations are very low if we consider the tonnage of nitrogen actually consumed by Germany in the form of fertilizers:

500,000 tons per year; and the amount probably should be greatly increased!

Considering only present statistics, the means for the production of nitrogenous fertilizers are very much below the consumption, however, it may be scrimped, but it would be a very short-sighted policy to limit ourselves to the satisfaction of present needs. If we wish to see the consumption increase, we must first of all multiply the means of production. In that way only can be put at the disposal of agriculture an abundance of nitrogenous fertilizers at normal prices.

And the duty of making such an effort falls upon the Government.

Nitrogen and National Defense

But nitrogen is an essential element in life, not only because of its use in agriculture. It is also an essential factor in national safety; it is the fundamental element of powder and war explosives.

Bread and powder! The paradox of our evolution insists that we are still so little civilized as to have as much need of one as of the other!

Nitrogen is indispensable, in the form of nitric acid or nitrates, to the production of all war powders (with a base of nitrocellulose or nitroglycerine) and of nitrogenous explosives[1]: the chlorate and perchlorate explosives, the only explosives other than the nitrogenous explosives, which were extensively used during the war, represent only one-tenth of the tonnage of explosives, and it does not seem expedient to develop the production of these explosives very much since they require a consumption of national resources (electrical power and coal especially) much greater than do the nitrogenous explosives.

We admit that an average of 1500 kilos of nitric

[1]Smokeless powders contain from 11.5 to 12 per cent.; nitroglycerine 18.5 per cent.; Melinite 18.34 per cent.; Trinitrotoluene 18.5 per cent.; ammonium nitrate 35 per cent.

acid monohydrate (or 300 kilos of nitri uitrogen) are necessary to make one ton of powder or explosives. With the formidable consumption which modern warfare requires, it is necessary to provide for almost 1,000 tons of powder and explosives per day, corresponding to a consumption of more than 300 tons of nitric nitrogen a day or more than 100,000 tons a year.

The possibility of obtaining this tonnage from national resources alone is no longer in this case a question of financial prosperity only: it is a question of life or death.

It is well for us to recall: in the course of the last war, only the support of the British fleet, which preserved for us the freedom of the seas, allowed us to be assured, and with what difficulties of our continued supply of Chilean nitrates. What would happen in case of new hostilities!

The Total Nitrogen Needs of France

The Necessity of Making Use of the Synthetic Process

Let us remember, also, that agriculture had to be strictly rationed during the war in nitrogenous fertilizers.

Results: the impoverishment of the soil, the decline in agricultural yields, and an increase in the importation of food products. We can then no longer permit that in the event of a world conflict agriculture should be deprived of any fraction of its normal share of nitrogen fertilizers.

It is necessary, as we have already said, if we wish to be prudent, to decide on the French nitrogen budget *for the years immediately to follow*:

For agriculture	110,000 tons a year
For national defense[1]	100,000 tons a year

[1] In war times only. The nitrogen consumption in times of peace for the production of war powder and explosives and mine explosives is practically negligible.

Let us consider our future agriculture consumption, 110,000 tons. Where will we get them?

Present production (statistics of 1912) gives us, we have seen:

Ammonium sulphate (coking plants, gas, night soils, etc.), 75,000 tons, or
15,000 tons of Nitrogen

Crude, cyanamide, 15,000 tons or
1,800 " " "

Organic matter, 50,000 tons or
2,200 " " "

19,000 tons of Nitrogen

There remain to be obtained
91,000 " " "

to make up 110,000 tons of Nitrogen

How can the problem be solved?

Two ways are open to us:—

(a). Either to remain dependent on Chile. In 1913 we were importing annually from Chile 300,000 tons of sodium nitrate at 250 francs=75,000,000 francs.

Now these 300,000 tons at 750 francs represent 225,000,000 francs.

We imported also from England:

25,000 tons of ammonium sulphate at 330 francs= 8,000,000 francs, which would represent today, at 950 francs, 23,000,000 francs.

(b). Or, freeing ourselves from this ruinous policy, to demand the balance of our consumption:

From the synthetic processes which we have just been discussing;

From the distillation of oil;

From cyanamide, nitrates, etc.

Let us recall that we have considered a plan of campaign divided as follows:

Toulouse plant (Haber or other process), ammonium sluphate or ammonium nitrate	36,000	tons of Nitrogen
Various plants (Claude process Casale or other processes), ammonium sulphate or ammonium nitrate	45,000	" " "
Coking plants to be built to distill 10,000,000 tons of oil (at 12 kilos of ammonium sulphate a ton)	Report	
Arc and other processes	2,000	" " "
Cyanamide, nitrates, etc. (new plants to be considered)	28,000	" " "
	111,000	tons of Nitrogen

These are the synthetic processes for the production of nitrogen which the present bill considers.

We have found in recent years the means of drawing from the immense reservior of nitrogen which constitutes the air, resources necessary for the nourishment of the earth.

Far seeing nations are hereafter assured of being able, with their own resources, to accomplish the restocking of their nitrogen supplies and provide for their agricultural requirements as well as their needs for national defense.

Chapter II

The Different Processes for the Synthetic Manufacture of Nitrogen Compounds and Their Present Development.

The processes for the fixation of nitrogen can be classified into three groups, according to the form more or less advanced, as compared with nitric acid considered as the final state in which it is possible to obtain nitrogen.

a. A first group of processes makes it possible to obtain nitric acid and nitrates by the direct union of nitrogen and the oxygen of the air and the absorption of the nitrogen oxides, which are formed, by water or by alkalies (the arc and Hauser processes).

b. Other processes make it possible to obtain directly by catalytic combination, of the nitrogen of the air and hydrogen, under pressure and at high temperatures.

M. H. Le Chatelier pointed out the principles of this synthesis in 1903 and Haber has studied their industrial applications.

These processes differ, in the first place, in the method of preparation of the hydrogen. This is the most important, the most difficult and the most expensive operation in actual practice. The second point of difference is the pressure (varying, according to the processes, from 100 to 900 atmospheres) under which the catalysis is carried out (the Haber-Bosch process in operation since 1913 in the German plants of the Badische Anilin und Soda Fabrik—the French process of Georges Claude, the Italian process of Casale, the English process of the Synthetic Ammonia and Nitrates Limited, the American process of the General Chemical Company).

Finally, certain processes yield nitrogen in the

form of compounds easily converted into ammonia by water or steam; these processes include calcium cyanamide (Frank-Caro process), sodium cyanide (Bucher process) aluminium nitride (Serpek process).

* * *

All these processes yield nitric acid or nitrates (for the manufacture of powder and explosives, for example) since the products obtained by the processes of the third group can be without great difficulty transformed into ammonia; and, the ammonia once obtained, either from its compounds or directly, by the processes of the second group, it can be oxidized to nitric acid by a catalytic oxidation using activated platinum or iron as a catalyzer.

In the case of nitrogen fertilizer production it is possible to furnish the product directly obtained (cyanamide) or to transform it into other compounds (ammonium sulphate and chloride, urea nitrates, starting with ammonia or products which yield ammonia) according to the exigencies of agriculture for which it is an advantage to have a fertilizer having a variable composition and a more or less rapid action.

Section I

Direct Synthesis of Nitric Acid.

The combination of the nitrogen of the air with the oxygen which accompanies it is obtained by bringing the air to a very high temperature, then chilling it rapidly in order to avoid the decomposition and intermediate temperatures of the oxide formed.

The method most widely distributed is that of the

Arc Processes.

It consists in passing a current of air through an expanded electric arc; this is the systematic reproduction of the phenomenon already pointed out, of

the production of nitrogen oxide in the atmosphere under the influence of electric discharges.

By this means there is obtained a gas containing scarcely more than 2% of nitrogen oxides. These oxides are condensed by water in enormous scrubbing towers and yield a nitric acid diluted to about 30% which must be concentrated if it is desired to use it in the manufacture of powders and explosives.

For the manufacture of fertilizers one can just as well absorb the nitrous gases directly with quick lime, or neutralize the condensed acid with limestone and thus obtain calcium nitrate.

This process is carried out on a large scale in Norway at the plants at Notoden and Rjuken (Birkland and Eyde furnace) constructed in 1904 near waterfalls which furnish the necessary electrical energy. The process requires indeed about 60 kilowatt hours per kilogram of fixed nitrogen which is to say that one or several plants fixing 100 tons of nitrogen per day would require a constant power of nearly 250,000 kilowatts.

The plants of the Norwegian Nitrogen Company at Notoden utilize 75,000 kilowatts. This company owns, at Soulom, (Hautes-Pyrenees) a plant erected during the war to utilize 12,000 kilowatts. There is another similiar plant at Roche de Rame (Briacon region) and other small plants in Switzerland, in Italy, in the Tyrol, and in the Baden region. All these plants use types of furnaces different from that of the Norwegian Company, but based on the principle which has just been explained.

Hauser Process

Founded on the fact that the explosive combustion of liquid or gaseous combustibles raises the temperature sufficiently to permit the combination of nitro-

gen and oxygen, the process consists essentially in recovering the nitrogen oxides in the waste gases from gas engines provided with special means for chilling the gases. This process was in the experimental stage in Germany before the war; these experiments were interrupted.

Bender Process

Here, one is not contented with the heat given off by combustion under ordinary pressure to affect the combination of the nitrogen and oxygen. This process also has no industrial history.

II

Direct Synthesis of Ammonia

The two substances of which ammonia is composed, nitrogen and hydrogen, seem to have between them a powerful affinity, since the destruction of ammonia requires at least 12 calories per gram molecule which represents a heat of combination capable of raising the reacting gases to the neighborhood of 1000°.

It may be concluded from this that when the two substances are put together they rush toward one another to unite. Nothing of the sort!

Their mutual affinity is hindered by a resistance which can be compared to friction and just as mechanical friction can be overcome by lubricants, so the friction with which we have to deal here gives way to action of a third substance, the catalyzer acting merely by its presence, the tertius gaudens, presiding over the union of the reluctant parties.

It was a French scientist, Tellier, who, in 1868, in his work on "Ammonia," proposed iron as a cat-

alyzer at a time when others had successively proposed uranium, osmium, molybdenum, etc.

In 1901, another of our scientists, Le Chatelier, formulated finally the theory of the synthesis of ammonia enunciating his law of the displacement of the equilibrium. The combination of three volumes of hydrogen and one volume of nitrogen results in the formation of only two columes of ammonia. The volume of the gas produced, therefore, is 1/2 the volume of the reacting gases: the law of the displacement of equilibrium predicts that the reaction will be facilitated by an increase in pressure.

At that time, 1901, Le Chatelier took out a patent in which he mentioned the use of iron as a catalyst.

Unfortunately, Le Chatelier used his iron absolutely pure and it has since been demonstrated that iron, in order to become an effective catalyzer, must be adulterated with certain "impurities" such as scientists decorate with the name "activators." Besides, an experimental error, which Le Chatelier, has explained since, deprive our compatriot of the practical profits of his discovery; he produced only traces of ammonia.

The Germans have the habit of lying in ambush for the discoveries of others, and often, being more patient, they develop them practically.

In 1904 Professor Nernst, inspired by the law of Le Chatelier, worked under a pressure of 50 to 75 atmospheres and was the first to describe an apparatus capable of operating under simultaneous action of a high temperature and of a considerable pressure.

Nernst did not take out a patent: thus it is in the public domain that Haber found his process and if improvements are later brought about in the Haber process, it is not in the Haber patent but in the public domain that they will have their source.

A—The Haber Process

The celebrated controversy between Haber and Nernst led Haber to convince himself that the higher the pressure is raised and the lower the temperature the greater is the proportion of ammonia formed from the mixture of nitrogen and hydrogen in the presence of the catalyzer.

But, on the contrary, Haber had observed that the speed of the attainment of the chemical equilibrium increases in proportion as the temperature is raised.

Now as Georges Claude has pointed out, the industrial problem "is to obtain as high a content of ammonia as possible in a current of gas passing through the apparatus." At 200 atmospheres, and below 500°, the formation of ammonia is very slow: Haber, therefore operates at temperatures of 500 to 600°.

Industrially the operation as it is carried out at the Badische Anilin und Soda Fabrik Aktiengesellschaft is developed thus:

First step—There is prepared first water gas and producer gas (or lean gas).

The water gas is obtained by playing a jet of steam on incandescent coke. The gas thus obtained consists essentially of *hydrogen* and of carbon monoxide, and besides of some insignificant fractions of carbon dioxide and nitrogen.

H_2	—— 51	parts
CO	—— 41	"
CO_2	—— 4	"
N_2	—— 4	"

Producer gas has no hydrogen, but to make up for that 67% of *nitrogen* with, besides, 30% of carbon monoxide and a little carbon dioxide.

N_2	—— 67	parts
CO	—— 30	"
CO_2	—— 3	"

The problem to be solved consists in mixing the two gases so that the nitrogen and hydrogen can be united in the desired proportions, one volume of nitrogen and three of hydrogen, and so that the carbon monoxide and carbon dioxide can be eliminated.

This is accomplished by causing the water gas to react in the presence of a catalyzer at ordinary pressure. The carbon monoxide of the mixture, and the water, give hydrogen and carbon dioxide. The new mixture is freed from its carbon dioxide by absorption in water under pressure; treated with sodium formate and caustic soda, which eliminate the last residues of carbon monoxide and of carbon dioxide. Then there is added a little extra nitrogen, which is obtained by the distillation of liquid air and which adjusts the nitrogen content so that the gas corresponds exactly to the composition of ammonia.

The carbon dioxide is carried off to a second factory, a unit in the large plant, and is used for the manufacture of Solvay Sodium Carbonate.

Second Step—The two reacting substances, nitrogen and hydrogen, are face to face with one another. It is now necessary to make them combine. For that purpose they are compressed to 200 atmospheres, and, in the presence of a second catalyzer, at about 550°, ammonia gas forms.

Third Step—The ammonia content thus obtained does not exceed 6%. It is important not to lose the gases not yet combined and with them the energy expended in compressing them. They are therefore compressed anew to bring up the pressure to 200 atmospheres and they are made to repass indefinitely over the catalyzer. Between each passage the ammonia produced is collected. Circulating pumps bring the entire gaseous mixture into contact with water, which absorbs the ammonia. The product is a twenty-five per cent aqueous solution. This aqueous

ammonia will serve later either for the preparation of gaseous ammonia for the manufacture of nitric acid by oxidation, likewise catalytic, or for the manufacture of ammonium salts for fertilizer.

The process has one drawback: it requires tricks so that neither we nor the English who were in possession of all of the patents, were able to get a kilogram of nitrogen out of it; a mechanism and a discipline on the part of the technicians who have required a long and methodical preparation in order to adapt themselves to it. But the production is regular and sure, and Germany counted on it to assure her of an agricultural hegemony which would render Europe tributary to her industry for its fertilizer requirements:

"*Our one limit,*" says the Memoire sent to the Reichstag by the Badische, May, 1915, "*will be the absorption capacity of the World Market.*"

B—The Georges Claude Process

At the very moment, 1919, when our administration was drawing up with the Germans the contract which we shall examine in a moment, a French scientist, Mr. Georges Claude, vouched for by his previous works, announced and demonstrated that he had just discovered a process for the synthesis of ammonia which, according to certain authoritative advices, was capable of competing with the Haber process.

French industry has watched for a long time the development of a synthetic process for the fixation of the nitrogen of the air. Even before the War, the Sociètè de Saint-Gobain had entertained proposals for the acquisition of the Haber process; they had, unfortunately for the conduct of our operations during the war, come to nothing. In March 1917 the company "Air Liquide" a "Sociètè Anonyme" (joint stock

company) for the exploitation of Georges Claude's processes, took out a series of patents on modifications of the preparation by the Haber process.

On May 19, 1919 Mr. Georges Claude presented a communication to the Acaqemie des Sciences. He showed that Synthetic Ammonia can be transformed into transportable fertilizers, but he replaced the quite expensive sulfuric acid by the chlorine of common salt which is a waste product in the soda industry.

On October 13, 1913 he explained, in another communication, the advantages of the use of very high pressures.

Finally, on December 1, 1919 and January 19, 1920, he emphasized the *advantages of the Synthesis of Ammonia under very high pressures.*

Georges Claude's contribution to this subject was the recourse to *very high pressures.* The Badische had always taken glory to itself for having compressed such enormous quantities of gas at such enormous pressures as 200 atmospheres. Mr. Claude did not worry himelf with the question of the strength of the metal when he considered increasing the pressure. A single difficulty presented itself to his mind: the tightness of the joints. But reflection indicates that tightness is more easily realized at 1,000 atmospheres than at 100, since for equal amounts of gas treated the joint is very much smaller in the first case. As for the hyper-compressor, Mr. Claude made it out of a simple piston passing through a leather packing into a thick cylinder. All this mechanical part is so simple that Mr. Claude was able to operate his hyper-compressor on a small scale before the Sociètè d' encouragement and the Societe chimique jointly, and to carry out the synthesis of ammonia under the eyes of the audience.

The result of Claude's improvement is that

operating in a very much reduced volume a much larger fraction of the gas combines and that there results a development of heat per unit volume twenty-five or fifty times as great as for the Haber process. The auto-reaction possible by the German method only with enormous apparatus, is accomplished here for very small installations treating, for example, twenty cubic meters of mixture per hour. On the other hand, the Ammonia content increases approximately proportionally with the pressure. The partial pressure of Ammonia is 250 atmospheres; it is at the most 12 atmospheres in the six per cent mixture under 200 atmospheres obtained by the Badische. Now the maximum pressure of ammonia at the boiling point, that is to say, the pressure down to which it is possible to strip the mixture of its ammonia by chilling it to this temperature, is seven to eight atmospheres. Negligible in comparison with 250 atmospheres which Claude used, this is very important in comparison with the 12 atmospheres of the Badische. Thus, by Claude's method it is sufficient to pass the gases charged with ammonia through a worm immersed in water at ordinary temperature in order to liquify practically all the ammonia, a procedure which is not possible to the Germans since out of 12 there remain 8 uncondensed. So, as we have seen, in the absence of refrigeration to 50° or—60° which is too expensive, they have had to inject water under pressure to remove the ammonia at each cycle; this consumes a great deal of energy, requires complicated apparatus and delivers the ammonia gas in the form of solution from which it is necessary in many cases to remove it by distillation.

The plan of the two processes can be seen at once.

The German process: enormous factories where hydrogen has to be produced with elaborate spe-

cialized equipment to meet the requirements of the synthesis.

The French process: thanks to the simplicity and to the limited volume of the apparatus, the production can be carried out in small factories wherever cheap hydrogen may be found, notably wherever there are coke ovens. Thus ammonia becomes a by-product of metallurgy, and as soda is a by-product of ammonia it is seen "if these hopes are justified, what a tie may exist, thanks to hyper-pressures, between three of the most impressive branches of human activity."[1]

This process operates in an experimental plant set up at Montereau by the Sociètè chimique de la Grande-Paroisse where there is a unit with a capacity of five tons of nitrogen per day. The hydrogen is obtained from water gas.[2]

The Claude process has not properly speaking any industrial history; but it does not seem as though serious difficulties should be met when plants for industrial production are started up; the apparatus will be identical with those which operate at Montereau. The process has never operated with coke oven gas as a source of hydrogen, but the use of these gases, it would seem, should offer no serious hazard in comparison with the use of water gas.

C—The Casale Process

The Casale process for the manufacture of Synthetic Ammonia is—like the Claude process—only an application of processes found in the public domain

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[1] Georges Claude.—High pressures and the ammonia synthesis Revue Scientifique, May 28, 1921, a study from which I have borrowed the outlines of the above anlysis of the Claude process.

[2] Another plant has just been established at Bèthune under the auspices of the Sociètè chimique de la Grande-Paroisse. I have asked for information on the state of the operations of this plant; they have not felt obliged to give it to me.

by Haber and the firm Badische Anilin und Soda Fabrik. The installation at Terni (Italy) differs from that at Oppau only by the two following characteristics:

The pressure of the gases in the catalysis circuit is from 500 to 700 kilograms per square centimeter instead of 200 kilograms at Oppau, and the elimination of the ammonia is accomplished in the worm of liquified gas by simple refrigeration (instead of being accomplished by solution in water).

On these two points the process is more like Claude's process than the Badische's. But it differs essentially from the former in this sense that as in the second, the gases circulate indefinitely under the pressure established, until transformation is complete so that there is a single circuit closed by a circulating pump (the circuit comprising only a single catalysis apparatus); while in the Claude process they are expanded after having transversed three or four catalysis apparatus in series. There have been installed successively at Terni catalysis apparatus capable of producing one, three, five, and seven tons of ammonia per day. The hydrogen is produced by the electrolytic decomposition of water and the mixture of nitrogen and hydrogen by combustion of an excess of hydrogen in air with elimination of the oxygen in the form of condensed water.

The company which exploits this process "Casale Ammoniac Company" has, besides its installation at Terni, other plants under way in France (Alais, Froges and the Camargue), in Spain, in Switzerland, and in Japan.

Electrolytic Hydrogen

It would evidently be possible in carrying out the catalysis either by the Haber-Bosch process or by the Claude process to produce the necessary hydrogen by

the electrolysis of water. This process would furnish the hydrogen very simply in a very high degree of purity. This process seems to have a certain future under particular conditions.

D—The Process of the Synthetic Ammonia and Nitrates Ltd.

During the war, the British Administration in accordance with suggestions of the "Nitrogen Products Committee" had begun at Billingham in the county of Durham, the erection of a plant devoted to the operation of the Haber process slightly modified, but the work was suspended at the time of the armistice. In the first months of the year 1920, after a serious study of the Nitrogen situation, the British government asked the firm "Brunner Mond & Co." to take up and continue the work which had been sketched out. This firm formed for this purpose a special corporation: "Synthetic Ammonia and Nitrates Limited" with a capital of £5,000,000 for the exploitation of the plants granted by the government, and the fixation of a quantity of 100 tons of nitrogen per day, which was to be brought up to 300 tons with the least possible delay.

The process considered was to be the modified Haber process, the operating pressure being lowered to about 120 to 150 kilos instead of 200 kilos.

According to the indications given the general assembly of the English Ammonium Sulphate Federation which was held November 16th last, the plant at Billingham would begin to operate in about six months.

E—The Process of the General Chemical Company

This Company even before the war had carried out experiments of a semi-industrial sort on the synthetic manufacture of ammonia by a process analogous

to the Haber-Bosch process but differing from it in that the operating pressure was maintained at about 100 kilograms; and in that the nature of the catalyzer was much more active than the Badische's but required the use of absolutely dry gases.

In 1917 with the aid of this Company, the government of the United States constructed at Sheffield, Ala. a plant with a daily production capacity which was fixed at 30 tons of ammonia.

This plant was started in June 1918, but the results were considered as so unsatisfactory that the experiments on an industrial scale were discontinued and an official commission was sent to Europe (June 1919) to study the installation already carried out, and in particular those of the Badische, in Germany.

As for the General Chemical Company, it is proceeding in collaboration with the Atmospheric Nitrogen Corporation in the construction of a plant at Syracuse (New York State). This plant should produce regularly 14 tons of ammonia per day which would be delivered almost exclusively in the form of liquid ammonia to the refrigerating industry.

Section—3 Products Which May Be Transformed Into Ammonia by the Action of Water or Steam

I.—Cyanamide

This process consists in first making calcium carbide, then fixing nitrogen with it.

The carbide results from the reaction of carbon (coke) on quick lime in the electric furnace. The fused carbide after cooling is crushed, reduced to a powder by powerful crushes and ball mills, and subjected at about 1,000° in special crucibles to a current of nitrogen supplied by liquid air machines. The nitrogen is absorbed giving off heat sufficient to maintain the reaction which is started by electrically

heating to a convenient temperature the center of the mass of carbide; from there the absorption spreads through the entire mass.

Cyanamide analyzes practically from 17 to 21% nitrogen. It can be supplied as such for fertilizer or it can be oiled or granulated which avoids the inconveniences resulting from powders. It can also be transformed directly into urea, or again into ammonia by treating it with steam in autoclaves under pressure (8 to 10 kilos); this transformation takes place with a nitrogen loss of about 5%.

The Cyanamide industry in France dates from 1907. The plants are generally situated in mountainous regions where they draw from the waterfalls the electrical energy which they consume in large quantities, especially for the manufacture of the calcium carbide. However, certain German plants produce their energy from lignite, an inexpensive combustible.

The French plants (belonging to the Societe des produits azotés) delivered before the war about 15,000 tons of cyanamide per year, corresponding to 3,000 tons of nitrogen. To avoid the danger which the submarine warfare threatened in curtailing the supply of nitrate, the Service des Poudres in 1917 decided on a program in accordance with which the production of cyanamide in France was to reach 250,000 tons per year and would permit supplying plants for the manufacture of 630 tons of nitric acid per day (corresponding to 50,000 tons of nitrogen per year).

Of these 250,000 tons, 180,000 tons would be manufactured in plants belonging to the State. The realization of this program not having been completed at the cessation of hostilities, the construction of a certain number of these plants was abandoned. Certain of the plants which were preserved are on the road to

completion, (in particular the plant at Lannemezan, leased to the Société des produits Azotés, in accordance with law of December 17, 1921); when these are finished the production of cyanamide in France for all the plants, private or owned by the State, will amount to 140,000 tons per year, corresponding to 28,000 tons of nitrogen approximately.

Germany developed considerably during the hostilities simultaneously with the synthetic ammonia plants, the production of its cyanamide plants, particularly in view of supplying its agriculture with nitrogen fertilizers. At present these plants can manufacture annually, 500,000 tons of cyanamide, corresponding to 100,000 tons of nitrogen.

The manufacture of cyanamide is likewise highly developed in Austria, in Hungary (plant at Dichio Saint-Martin, now in Roumanian territory), in Switzerland and in Italy.

2—The Bucher (Cyanides) and Serpek (Nitrides) Processes.

These processes have not entered the industrial phase and do not appear likely to have an interesting future.

Section 4

The Oxidation of Ammonia Into Nitric Acid and Nitrates

Ammonia produced either by direct synthesis or from cyanamide or otherwise can be transformed into nitric acid by catalytic oxidation.

A mixture of air and ammonia containing 8 to 10% of ammonia gas is passed over a catalyzer at about 700° (platinum or activated iron). In contact with the catalyzer, the oxygen of the air destroys the molecule of ammonia and transforms the nitrogen

into nitrogen dioxide and the hydrogen into water. From that moment the operations are carried out in a manner analogous to those which have been described previously for the condensation of nitric acid in the arc processes (condensation towers). Only here, the condensation is easier, for the gases passing into the towers have a content of about ten percent oxide of nitrogen instead of two percent.

There is obtained by this process nitric acid of 50% concentration which can be used without further concentration for the manufacture of melinite. For the manufacture of tolite or gun cotton, on the contrary, it is necessary to concentrate it.

The oxidation of ammonia is practiced in France by the Ostwald process, characterized by the use of a catalyzer formed of a spiral roll of platinum, and by the use of a heat exchanger so that the reaction can be carried out without the application of external heat, the temperature being maintained at about 700° by the heat given off by the reaction.

The program of 1917, which has just been discussed in connection with cyanamide, contemplated the construction in the powder plants (in order to avoid transportation of nitric acid) of 6 factories for the oxidation of the ammonia obtained from cyanamide (produced in plants situated in the Alps or the Pyrenees in the proximity of water falls) permitting a daily output of 630 tons of nitric acid corresponding to 50,000 tons of nitrogen per year.

As for the cyanamide plants the construction of the oxidation plants was not finished at the cessation of hostilities. It was decided to preserve or finish only three of the six plants which would be able to manufacture (with the ammonia provided either by cyanamide plants or by synthetic ammonia plants) 330 tons of nitric acid per day which would be 26,000 tons of nitrogen per year.

The material corresponding to the three plants whose construction has been abandoned has been preserved and in case of need they could be erected fairly rapidly.

Section 5

The Transformation Into Fertilizer of the Synthetic Products Obtained

The nitric acid obtained by the arc process is generally delivered to agriculture in the form of calcium nitrate of which a word was said above. It can equally well be transformed into sodium nitrate or ammonia.

Ammonia is more generally delivered to agriculture in the form of ammonium sulfate obtained by saturating sulfuric acid with ammonia gas.

The Germans, deprived during the war of the pyrites necessary for the manufacture of sulfuric acid, have prepared and still prepare ammonium sulfate by causing ammonia and carbonic acid to react with calcium sulfate (gypsum) reduced to a powder and suspended in water: calcium carbonate is precipitated and there is obtained "sulfate of carbonate" (!) (ammonium sulfate?) which remains dissolved and can be crystallized by concentrating this solution after filtration. This method may be economical in certain cases. It consumes gypsum coal (for the concentration) instead of pyrites.

Ammonia can equally well be delivered in the form of ammonium chloride. The production of which may be connected favorably with that of soda by the ammonia process: in this manufacture there is obtained normally, by acting on ammoniacal brine with carbon dioxide, sodium carbonate and ammonium chloride from which ammonia is regenerated by treatment with lime. Instead of regenerating the

ammonia there can be delivered to agriculture the ammonium chloride which is formed. But the use of ammonium chloride as a fertilizer has not yet reached the stage of common practice and it has not been proved that it will not present some inconvenience.

Ammonia can also be transformed into ammonium nitrate by oxidizing into nitric acid a part of the ammonia and causing the nitric acid thus obtained to react with a new fraction of the unoxydized ammonia. There is thus obtained a fertilizer which does not contain any inert material (sulphur or chlorine in the two preceding fertilizers) and which contains simultaneously nitric nitrogen and ammoniacal nitrogen, amounting in total to 33%, which is particularly advantageous for transportation and distribution.

These circumstances make ammonium nitrate an extremely interesting fertilizer. The Germans have used it mixed in equal parts with ammonium sulfate. The catastrophe at Oppau interrupted the manufacture of this double salt, but it appears that merely the method of storing is to be incriminated by this catastrophe.

Finally, from ammonia can be obtained one more fertilizer little known yet but which appears to be destined to a sure success as soon as the practicability of its rather delicate manufacture can be realized: that is urea.

As for cyanamide, it may be used directly as a fertilizer after having been subjected to oiling or to granulation. It can equally well be transformed directly into salts of urea. As it can be (at the expense of steam consumption and a loss of nitrogen) transformed into ammonia, it can be used for the manufacture of all the fertilizers which have just been enumerated.

Chapter III

Program of the Development of the Nitrogen Industry

Comparison of Different Processes

The importance of the Development in Providing for the Nitrogen Industry

From all that we have shown in the preceding chapters there results the evidence that a plan providing for the installation of a factory capable of fixing 100 tons of nitrogen a day, or 36,000 tons a year, is modest enough!

We can see in it only a first step toward freeing the country from foreign importation.

Far from menacing the nitrogen industries, such a program leaves a vast field for their development and for the development of new industries.

As for the inequality of war-time needs compared with those of peace times, we note that the development of the use of nitrogenous fertilizers will be advantageous, not only from an agricultural point of view, but also from the point of view of national defense. In the present state of affairs, it would be impossible to make sure from one day to the next, that the production of nitrogen required for the intensive manufacture of powder and explosives would be forthcoming from our national resources. If, on the contrary, agricultural use is developed and at the same time national production, it will be possible to insure at a day's notice, the supply of 100,000 tons of nitrogen per year to the factories producing powder and explosives, by making use of the temporary rationing of agriculture.

This rationing can cease on the day when the production shall have been increased by 100,000 tons per year.

COMPARISON OF PROCESSES EXAMINED

In order to appreciate under what conditions it will be advisable to run a factory producing 100 tons of nitrogen a day (36,000 tons a year) it is well to compare the different processes that we have examined.

We shall confine ourselves to those which are really accepted in industrial practices or can be considered such:

The synthesis of nitric acid by the arc process;
Manufacture of cyanamide;
The synthesis of ammonia (Haber-Bosch and Claude processes).

The question has been looked into with the greatest care by a commission composed of seven members of the l'Academie des sciences, presided over by Mr. Th. Schloesing and of whom the Government, anxious to be enlightened and to support its line of conduct by advice that is indisputably competent, has asked the following question:

"Do there exist at the present time any processes for the manufacture of synthetic ammonia and the necessary hydrogen which offer from the point of view of trade security as well as cost price, advantages over the processes which are the subject of the agreement covered by bill No. 1127, filed June 22, 1920?"

The above mentioned Commission believed it was its duty to carry on its studies further: without limiting itself to the comparison of the principal processes for the synthesis of ammonia (Haber-Bosch and Claude processes), it has extended its investigation to the arc and cyanamide processes for the production of nitric acid.

We ought to point out that, desirous to avoid the

revealing of information which had been communicated to it in the course of its inquiry in strict confidence and to protect the special interests in question, the Schloesing Commission has expressed in a very earnest manner its desire that the text of its report should not be made public.

We submit to this desire and limit ourselves to mentioning the conclusions of this report which are necessary to support our conviction. We shall compare first the processes for the manufacture of synthetic ammonia (Haber-Bosch or Claude without distinction) with the other processes which we are considering, and we shall then compare the two remaining processes for the production of synthetic ammonia to each other.

I—Nitric Acid by the Arc Process

The characteristic of these processes is the enormous consumption of electric energy that they demand (60 kilowatt hours per kilogram of fixed nitrogen, which for a production of 100 tons per day would necessitate the production and use of a constant power of about 250,000 kilowatts).

It is true that the whole expense of coal would be avoided; the nitrogen could be obtained directly in the form suitable for the production of powder and explosives.

Nevertheless we should find advantages (even for the production of nitric acid) over the processes for the production of synthetic ammonia and ammonia oxidation, only if electric energy could be obtained at an extremely low price, which is the case in the powerful works of the Societe norvegienne de l'Azote, whose prosperity is well known.

With the waterfalls which could be used in France, and the very costly generating stations which they would require, we could not count on such a result.

The advocates of the arc process estimate, it is true, that the cheapness could be expected, if they utilized for nitrogen production, the energy lost in hydroelectric stations, which are subject to great variations in demand, either daily or seasonal.

It would amount to adding to each central hydroelectric station certain apparatus for the production of nitric acid, in a relatively limited quantity. It is not a bad idea: the fact remains, nevertheless, that the present methods and installations do not lend themselves to this sort of use of the peak supply in sufficient proportions. Now the program for the production of 100 tons a day cannot be expected to work out.

We may add that the production of synthetic ammonia with the production of hydrogen by electrolysis might be managed with the use of peak supplies: this is a point, the more interesting because there would result a consumption of energy per kilogram of fixed nitrogen which would be only one-third more than that estimated in the Arc process.

II—Manufacture of Cyanamide.

The cost of electric energy for the manufacture of cyanamide is much less per kilogram of fixed nitrogen than in the manufacture of nitric acid by the Arc process: it is only from 17-18 kilowatt hours per kilogram of fixed nitrogen instead of 60.

On the contrary, the cost of the fuel which is nothing in the Arc process is in the neighborhood of 3.5 to 4 kilos per kilogram of fixed nitrogen, including the coke for the manufacture of the carbide and the fuel for the manufacture of the calcium necessary for the manufacture of the carbide:

Now in the different processes for the synthetic manufacture of ammonia the mechanical energy required per kilogram of fixed nitrogen (of hydro-elec-

tric or thermal origin) corresponds only to one-fifth or one-sixth of what is used for the cyanamide (17-18 kilowatt hours per kilogram of nitrogen). The quantity of fuel used for operations other than the production of mechanical energy is less than the figure of 3.5 to 4 kilos representing for the cyanamide the consumption per kilogram of fixed nitrogen.

On the contrary, if we are considering the production of fertilizers, cyanamide can be used as it is, while ammonia has to be transformed into a solid product (sulphate, chloride, or nitrate), which makes necessary some costs for changing it over, which are added to the cost of the ammonia.

Also, provided that the electric energy is produced at a relatively low price, which is the case in the existing cyanamide factories, the development of an industry of synthetic ammonia fertilizers does not appear to be fatal to the existing cyanamide fertilizer industry.

The problem has a different aspect if we consider, on the contrary, the manufacture of explosives which necessitates the transformation of cyanamide into ammonia, a process which does not enter into the cost of the synthetic ammonia obtained directly. The process for synthetic ammonia has a very obvious advantage over the cyanamide process. The installation of new cyanamide works with the view to the manufacture of ammonia and nitric acid or nitrates is then not to be considered. The result is in absolute agreement with the conclusions of the Commission.

The objection may be raised that the installations for the synthetic production of nitric acid were constructed in France during the war, and that they made use of the cyanamide processes. Although they believed in 1917 that they ought to stop the cyanamide process, the fact was that they thought they had only insufficient data on the process for the synthetic production of ammonia, then in industrial

use (Haber-Bosch process), and could not hope to succeed without serious mistakes. The difficulties met in other countries (the United States, for instance, where the manufacture is not yet perfected) in carrying out the synthetic manufacture of ammonia without sufficiently exact data, show that the attitude which has prevailed in France is not devoid of clear-sightedness. The situation is quite different now since we have on the one hand the most exact instructions on the Haber-Bosch process and since, on the other hand, the Claude process, first appearing in 1917, can now be considered perfectly known.

Let us add then that if one considers the production of ammonia with the production of hydrogen electrolytically, the consumption of energy per kilogram of fixed nitrogen is very obviously in the same class as the cyanamide process; on the other hand, the consumption of fuel is 0.

III—Comparison of the Haber-Bosch and Claude Processes

From the preceding it follows that the processes for the production of ammonia by direct synthesis are the ones advisable for us to consider. There remains for us to consider which of these two processes will be used.

As has been explained, the Claude process permits the use either of water gas from gas producers, as in the Haber-Bosch process, or of the gas from coke furnaces, which is especially advantageous, according to the inventor. If we compare the two processes using water gas and if we assume, in addition, that the power produced in the Claude process by what is left of the water gas when hydrogen has been extracted from it, is produced in the Haber process in a like manner by means of producer gas (du gas pauvre) we reach the following conclusions:

1. The expenses of the initial installation of a plant fixing 100 tons of nitrogen a day would be in the same class for both processes.

2. We may consider that in spite of a consumption of mechanical energy of about 50% more than that which is used in the Haber-Bosch process, the Claude process will furnish a kilogram of fixed nitrogen at pretty nearly the same price as the Haber-Bosch process.

3. In the case of the Haber-Bosch process which has no fuel gas residues to use (the characteristic of the process is, in fact, the transformation of the carbon oxide contained in the water gas was into hydrogen and carbon anhydride), and which can without difficulty use an outside source of electric power, the substitution of electric motors for gas motors appears to permit, everything else being equal, the realization of a noticeable decrease in expenses of installation; and if the kilowatt-hour is reckoned at a price such as can be expected for electric power coming from waterfalls, a noticeable decrease in cost is also made possible.

4. On the other hand, the Claude process, if coke furnace gas is used instead of water gas will involve a conspicuously lower cost for the initial installation than the Haber-Bosch process (in consequence of the absence of gas producers replaced in this case by coke furnaces supposed to be installed). As for the cost, it will evidently be a function of the value of the coke furnace gas which it is not possible to determine a priori and which may be subject to the greatest variations of price according to circumstances, according to local needs, according to negotiations between the parties concerned.

This cost can be brought below the cost of the Haber-Bosch process only in case the manufacturers shall be able to obtain their coke furnace gas at the low price that they look forward to.

These results are entirely in agreement with those given out by the Technical Commission in its report;

5. As for the use of coke furnace gas, there enters a very important consideration other than the consideration of a technical order.

This use supposing that it might be advantageous from point of view of cost would require the construction of plants in the immediate neighborhood of coke furnaces, that is, on the north and east frontiers.

Now we must not lose sight of the fact that the plan under consideration has for its special object the increase of resources in war times for the production of powder and explosives. The powder works, which in war times, will use the ammonia produced, were erected for purposes of security in the west and south of France. If coke furnace gas is used, then the ammonia plants will be situated very far away from the plants which will use it, which would necessitate transportation for a long distance, which is very inconvenient in time of war, particularly in the case of a special material. The distribution of these plants as a consequence of the use of coke furnace gas will increase the difficulty of transportation still more. Finally, and this is the most serious objection, it would be an unpardonable imprudence to build in the north and east regions, where they would be most exposed to destructive raids, plants of vital importance to the supplying of our armies in war times.

Considering these facts, the use of coke furnace gas is not to be considered in the first plan for realizing the installation in which the government has taken the initiative for the sake of national defense. There remains before you for the realization of the military program, the two processes, Haber-Bosch and Claude, both using the same sources of hydrogen (water gas or eventually electrolysis) and to be considered therefore as practically equivalent.

Chapter IV

The Agreement of November 11, 1919

Now that we know the reciprocal merits of several processes for the manufacture of Ammonia, we will be able to examine the advantages of the agreement passed on November 11, 1919, between the State of France and the Badische Anilin.

"About June, 1919, immediately after signing the treaty with Germany, having learned that the latter had been able to continue the war thanks to the Haber process and thanks to the possibility of producing Synthetic Ammonia, we have negotiated for the purchase of this process for France. I had requested and have obtained an option. My honorable successor, Mr. André Léfévre, has taken up this option and I congratulate him on it".

In these terms, Mr. Laucheur recalled to the Chamber, during the course of the first meeting on July 3, 1920, under what circumstances the Ministry of Industrial Reconstruction has been led to consider the production of the Badische. Article 297 of the Treaty of Versailles reserves for the Allied Powers, the right to sequester and liquidate all the property, rights and interests belonging to the Germans. The Badische had taken out several patents in France to protect its processes; the State of France then had the right to liquidate these patents and processes.

England and the United States, who during the war had attempted in vain to develop the processes other than the German process, have hastened since the Armistice, to get possession of the Haber patents and cede them to private companies.

France was not content to get possession of them. Estimating that the very delicate and special technique developed at Oppau and Mersebourg could not be

acquired by the French engineers, France attempted to treat with the Badische to obtain its technical cooperation for the purpose of exploiting the Haber patents.

The contract passed on November 11, 1919, bears on behalf of the Germans, the signature of Mr. Bosch, Director of the plant, who participated in the negotiations at the Treaty of Versailles, and on behalf of the French, the signature of Mr. Patart.

Article 13 provides that France "can within a period of three months from the date of the contract, renounce the rights and obligations resulting therefrom. After this period of time has expired, the contract will be carried out in full." The period of refusal expired, therefore, on February 11, 1920. On the 22nd of June following, the question of the legality of approving the agreement was filed. In the interval a prorogation had been obtained until April 1, 1920.

This is the text of the contract:

CONTRACT BETWEEN THE STATE OF FRANCE AND THE BADISCHE ANILINE AND SODA FABRIK, A. G.

The Transfer of a Process for the Manufacture of Synthetic Ammonia.

Between the Ministry of Industrial Reconstruction, acting in the name of and in behalf of the State of France and designated in the following as "the State of France", and represented by Mr. Patart, Director of Powder, party of the first part, and the Badische Aniline and Soda Fabrik Aktiengessellschaft, joint stock company of Germany, with a capital of Ninety Million Marks (90,000,000 M.), which is located at Ludwigshafen on the Rhein, designated in the following by the four initials B. A. S. F., represented by Messrs. Professor Bosch, President of the Council of Administration, and Allbrecht, Attorney for the Company, duly appointed in conformance with the

German law; it has been declared and agreed as follows:

DECLARATION

The B. A. S. F. possesses for the production of Synthetic Ammonia, certain processes used in the plants at Oppau and Mersebourg. In order to protect these processes, the B. A. S. F. has taken out certain patents in France. The State of France, desiring to apply and exploit in France the above mentioned patents and processes, has judged it to be to their advantage to obtain the voluntary cooperation of the B. A. S. F., to this end, in matters regarding the application of the above patents and processes, such as the technique, the technical secrets necessary or useful in the manufacture or exploitation, and the use of recent improvements and investigations without in any way impairing the rights which the French State obtained on patents and processes examined under the Treaty of Peace signed June 22, 1919 and without making the State of France in any way abandon all or any part of these rights.

In consequence, the State of France and the B. A. S. F. has agreed as follows:

ARTICLE I

The B. A. S. F. agrees in a general way to provide the French State, under the forms and conditions which will be stipulated hereinafter in the present contract, all the explanations and detailed information necessary or useful for operating all the processes used in the plants at Oppau and Mersebourg, for the production of Synthetic Ammonia and for the transformation of this product into Ammonia Sulphate and Nitrates of Ammonia, as well as all the details for the installations necessary to their production, the results obtained and the improvements under investigation.

ARTICLE II

The B. A. S. F. agrees for the duration of the present contract, to exploit neither directly nor indirectly nor by way of authorizing or ceding licenses, not in any other way, the processes and products mentioned in Article I, in France, in the French Colonies and the countries under French protectorate.

Reciprocally, the French State agrees under the same conditions, to exploit neither the processes nor the products mentioned in Article I, in any other countries except France, the French Colonies and the countries under French protectorate.

On the other hand, by virtue of the present contract, the French State can exploit the products of Article I in France, in the French Colonies or in the countries under French protectorate, either directly or by any other individual or company, and can use or sell the products obtained by these processes in the same countries.

ARTICLE III.

The present contract implies the total and exclusive ceding to the State of France, of all the French patents taken out in France and bearing on the manufacture of the products enumerated in Article I. The ceding will be legalized at the request of the French State and at its expense, and will comprise the exclusive license for using the above patents.

The two contracting parties agree to let each other have the benefit of any improvements which they make during the duration of the contract for the above processes.

In particular, the B. A. S. F. will give to the French State, the French Colonies and the countries under the protectorate of France, exclusive license for all additional patents or improvements which they are

able to take out in the future relating to the processes mentioned in the first article.

But, the B. A. S. F. alone will retain ownership of the patents for articles other than those which are made the object of the present contract; she will not take up, however, any question on the validity of these patents or on their duration.

ARTICLE IV.

The B. A. S. F. will give over to the French State as quickly as they will be needed, the plans in general and in detail, for a plant capable of fixing in the form of Ammonia solution, 100 tons of Nitrogen per day of twenty-four hours, as well as all the necessary information concerning the construction, operation and maintenance. In addition it will place at the disposal of the State of France, all the installation and organization pertaining directly or indirectly to the manufacture of the products enumerated in Article I, or anything which is indispensable to the preparation of the raw materials or intermediate products used in obtaining them. This information will comprise especially, process books and detailed lists of pieces of apparatus; plans of foundations, the system of piping, means of communication, all installation and apparatus for control, measurement and safety, necessary or useful for the perfect operation of the complete plant.

The B. A. S. F. will inform the State of France in every particular concerning detailed measurements, precautions to be taken to avoid accidents, to obtain the best yields and the best quality, and it will also give information on the most advantageous method of operation.

From the time that the present contract takes effect under the conditions specified in Article 13, the French State must proceed, either directly or indi-

rectly (through individuals or companies), with the construction of a plant capable of producing as indicated above.

ARTICLE V.

The B. A. S. F. will make known in a precise and detailed way, the results to be expected at each stage of the operation, including the thermal, chemical and mechanical yields of each operation and of each machine and piece of apparatus and of every operation which is concerned in the manufacture. It guarantees positively, the results obtained in its own plants under continuous operation, such as are set forth in the figures contained in Supplement No. 13, and it is expressly stipulated that the present contract is passed on the basis of this guarantee.

The B. A. S. F. also guarantees the authenticity of a detailed and complete diagram for the installations to be made; this diagram constitutes Supplement No. 2, included in the present contract.

ARTICLE VI.

The State of France agrees expressly, not to divulge the processes which are the object of this contract. It will bind all the employes to the strictest secrecy by obtaining the signature of these employes, including all delegates and representatives who have any knowledge of the process as a whole or in part, and who before being employed, will be obliged, under penalty of the law, to keep secret all the manufacturing proceses of which they have any knowledge, and in case of dismissal, will be obliged not to give their cooperation, either directly or indirectly to any similar industry carried on in France or abroad for the length of time determined upon.

This condition will remain in force during the duration of the present contract and fifteen years after its expiration.

ARTICLE VII.

The B. A. S. F. agrees to give to the State of France, in every possible way, its advice and its aid in the setting up of all construction and installation for a plant capable of fixing 100 tons of Nitrogen per day, under the conditions specified in the above article, as well as aid in the control of the construction and putting into operation. To this end it will send the necessary personnel to supervise construction and operation during construction, until the production and yields indicated in the present contract and supplements have been attained during a period of fifteen consecutive days. The State of France will reimburse the B. A. S. F. for the traveling and living expenses of the above mentioned personnel while in France, but the salaries of this personnel will remain in charge of the B. A. S. F., since it may be considered that they are included in the sum paid to the B. A. S. F. in remuneration for its cooperation.

ARTICLE VIII.

Until the previously announced results have been attained in continuous operation, the employes or agents of the State of France will have free access at all times to the plants of the B. A. S. F. where the processes of the present agreement are carried on; all facilities will be given to these employes or agents to learn in the plants of the B. A. S. F. all details for operating the above processes, for operating the apparatus and for applying the methods of analysis, control, measuring and safety.

The same will hold throughout the duration of the

contract whenever certain improvements are made on the process, or in case of necessity, by agreement between the contracting parties.

ARTICLE IX.

The B. A. S. F. will furnish directly without profit to itself, all machines and all apparatus which it will be advantageous to keep secret in the interest of both parties or, all such apparatus as cannot conveniently be constructed by any other place than the shops or sources of supply of the B. A. S. F. In both cases the B. A. S. F. will bill the French State for the apparatus specified above, either at the cost price or purchase price. It is agreed that the cost price will be established by adding to the cost of materials and labor an additional charge of 10% for general expenses and amortization and it is agreed that the purchase price will be determined by adding to the sum actually paid to the Supply House, an additional charge of 5% to cover expenses of administration. In case the B. A. S. F. is not able to furnish the apparatus in question, it will indicate the source of supply to the State of France and will act as intermediary, if so desired, in order that the purchase will be concluded under the best conditions.

It is agreed that for the apparatus which the State of France will order for the French plants, either for the first installation planned or in case of further enlargement, it will oblige its constructors not to divulge any of the secrets of construction which the B. A. S. F. has given them and not to deliver this apparatus except to the State of France, unless by agreement with the B. A. S. F.

The B. A. S. F. will guarantee good quality and will give assurance for perfect operation of all the apparatus which it will supply or the construction of which it has controlled or which has been bought in

accordance with its diagrams and specifications. It will bear no responsibility for those which do not satisfy these last conditions.

ARTICLE X.

In remuneration for the voluntary cooperation furnished by the B. A. S. F., under the conditions specified in the present contract, for putting into operation its processes, the B. A. S. F. will receive from the State of France:

1. A fixed sum of Five Million Francs (5,000,000 Fr.) payable as follows:

Two Million Five Hundred Thousand Francs (2,500,000 Fr.) as soon as the present agreement becomes effective, in accordance with the stipulations of Article 13, and—

Two Million Five Hundred Thousand Francs (2,500,000 Fr.) when the plant or plants installed in France are producing in continuous operation per day of twenty-four hours for a period of two weeks, a minimum of twenty tons of Nitrogen in the form of Ammonia solution.

2. A royalty per kilo of Nitrogen contained in Ammonia solution produced in the high pressure plant, this royalty being fixed at twelve centimes (12 c.) if the average price for the unit of Nitrogen (a kilo) contained in Chilean Nitrate of Soda delivered c.i.f. at a French Port, remains equal to or above six francs during the period under consideration (one-half year); it will be lowered to ten centimes (10 c.) if the average price of the unit of Nitrogen is between six francs and three francs or will become eight centimes if this average price is between three francs and two francs, and five centimes, if the average price is below two francs. This royalty will be due from the time that the first plant is put into operation and

from that moment on when the production of thirty tons of Nitrogen in the form of Ammonia, per day of twenty-four hours, will have been attained. The annual royalty will not be less than 500,000 francs, whatever the production, even if it is nothing; this minimum will be increased to One Million Francs, from the time that a production of sixty tons per day of twenty-four hours has been attained. This royalty will cease to be paid upon expiration of the fifteenth year, counting from the day when the production of thirty tons will have been obtained.

The State of France will make payment of the royalty semi-annually during the month which follows the expiration of each half year. The bill will be calculated as we have said above, according to the average selling price of Chilean Nitrate delivered c.i.f., French Ports, during the course of the expired half year; this average price is established on the bases fixed by common agreement between contracting parties. The royalty will be based on the quantity of Ammonia solution produced during the half year under consideration, in both the initial installation and any enlargements or any other installations effected later. The production of Ammonia solution will be computed in the business books, which will be daily recorded under the exclusive supervision of the State of France. These books will be held at the disposal of representatives of the B. A. S. F. who will be able to audit them.

In cases where, on account of enlarging the initial installation or on account of creating and operating new installations, the capacity of all the plants together exceeds one hundred tons per day of twenty-four hours, the B. A. S. F. has the right to an extra payment of a sum calculated on the daily capacity, amounting to 35,000 francs per ton of Nitrogen, for production between 100 and 200 tons of Nitrogen in the form of

Ammonia solution, per day of twenty-four hours, and for production above 200 tons per day to the amount of 30,000 francs for each extra ton.

These sums will be paid by the State of France to the B. A. S. F. dating from the day that the enlargements or new installations corresponding to the increase in capacity have been put into operation.

To make clear what has been said above, take for example the following case: By certain enlargements or new installations the total capacity has been carried to 190 tons of Nitrogen, the B. A. S. F. would then have the right to a supplementary sum in addition to the sum of Five Million specified above, calculated as follows:

35,000 x 90 = 3,150,000 francs (Three Million One Fifty Thousand Fr.)

And if the capacity of production should be carried to 320 tons of Nitrogen per day, the B. A. S. F. would have the right to:

35,000 x 100 = 3,500,000 francs (Three Million Five Hundred Thousand Fr.)

for the part 100 to 200 tons—

30,000 x 120 = 3,600,000 francs (Three Million Six Hundred Thousand Fr.)

for the part 200 to 320 tons—namely, a total of 7,100,000 francs (Seven Million One Hundred Thousand Fr.)

If the B. A. S. F. grants to a third party for any other country than France, the French Colonies or countries under French protectorate, certain conditions considered more advantageous by the French State than those of the present contract, the latter will have the right to require that these latter conditions should be made to apply in place of those specified in the present contract. The B. A. S. F. must report without any delay to the State of France, the contracts which it desires to make with the third

party for the exploitation of the processes mentioned and which might be considered by the State of France as more advantageous to it than the present contract; the State of France should make known its decision within a period of six months from the date of the communication received by her.

ARTICLE XI.

The payment specified above will be made to the B. A. S. F. and in the absence of agreements to the contrary, they will be made in French money, having legal currency in France, and not as compensation for the war indemnity, as per the Treaty of Peace signed June 2, 1919.

ARTICLE XII.

The present contract expires after a period of fifteen years from the date when the production of thirty tons per day shall have been attained. If certain delays in the setting up of the first plant have been due to the fault of the B. A. S. F., the duration of the payment of the royalties will be reduced by a period equal to the time of the delays, as stated in the legal forms in France.

ARTICLE XIII.

The French State can, during a period of three months after the signing of the present contract, refuse all rights and obligations resulting from it, and in this case the date of the notification of the B. A. S. F. will be considered the date of the cancellation of this contract without indemnity on either side. After this period has expired and if this refusal is not made, the contract will take full effect.

ARTICLE XIV.

The State of France reserves exclusively the right, recognized by the B. A. S. F. as here, to substitute any third person or company designated by her in the rights and obligations of the present contract as a whole or in part, and with the one proviso that in every case the French State will guarantee the B. A. S. F. the execution of all obligations of the present contract.

ARTICLE XV.

At the expiration of the contract the State of France will remain in possession of the rights, licenses and powers ceded to it by the present agreement without payment of any royalty to the B. A. S. F.

Made in Paris in duplicate, November 11, 1919.

Signed—PATART.

BADISCHE ANILIN & SODA FABRIK,
(Sgd.) BOSCH,
ALLBRECHT.

Copy attested:
GENERAL MILITARY INSPECTOR, DIRECTOR.
(Sgd.) G. PATART.

ASSUMING THE NON-RATIFICATION BY PARLIAMENT OF THE AGREEMENT OF NOVEMBER 11, 1920.

Have we still free hands?

In accordance with Article 13 of the agreement, the agreements signed between the Ministry of Industrial Reconstruction and continued by the Minister of War, party of the first part, and the Badische Anilin, party of the second part, are definitive. In

pursuance of these agreements certain damages could be claimed from the party who caused a cancellation, the collection of which the Badische would have to contest at law in the courts in the home of the defense, namely in France.

The Powder Department estimates that these damages could not amount to a large sum, the Badische having maintained from the start (particularly in a letter of November 11, 1919, the day of signing the contract), that it was "in consequence of particular circumstances that the contract was concluded with the State of France under conditions extremely favorable to the latter."

The only damages which the German Company could claim would be the communication of certain technique, in the manufacture to representatives of the French State (there are no secrets): yet the Gerans are the first to declare that this technique is attainable only by the engineers in their own plants.

Moreover, the Badische has received on April 1, 1920, in accordance with article 10 of the agreement, a sum of 2,500,000 francs, which she could not be forced to return, although this sum was only paid on account on the first installation constructed by the French State, and for the cooperation of the German Company during the construction, setting up, and operation of the first installation (first project of the contract dated October 31, 1919). If this first installation should now not be recognized, the amount paid would remain in the hands of the German Company without legal redress.

However that may be, if it could be shown that the installation planned for execution by the agreement is not of a nature to serve the general interests of the country, and that we were balancing the risks of cancellation against the greater sums due in case of ratification, the duty of Parliament would be

to refuse to vote approval of the agreement and allow the responsibility for this refusal rest with those who had prematurely made use of the signature of the state.

But, we are going to see that as Mr. Loucheur has declared, we have the right of taking advantage of the conditions which the contract of November 11, 1919, will procure for us.

THE MAIN POINTS IN THE AGREEMENT.

Let us recall the main points of the contract passed with the "Badische Anilin and Soda Fabrik."

In this contract all risks have necessarily been avoided; the German company has been interested in the complete success of the French enterprise, and at the same time, all German competition on French territory is precluded.

It is clear from the preamble of the contract that the German company is to bring its "voluntary cooperation," independently of all the rights conceded to the French State by the Treaty of Peace and without impairing these rights.

The first article provides that the German Company should furnish all explanations and necessary details for operating certain processes, the patents and licenses for which it ceded wholly and exclusively to the French State (Art.); all plans of the whole and in detail (Article 4), the technique and control measures, to insure the best results (Article 5); Germany is also to lend its personnel when necessary, and is to help when requested, in the production of the material (Article 6, 7, & 8).

Germany is to give complete and free access into its plants to the French technologists (Article 8) and is to inform the latter during the period of the contract of all improvements which it makes in regard to

these processes (Article 3). Besides, all direct or indirect competition is prohibited in connection with products manufactured by these processes in all territory belonging to France, its colonies and countries

WE ARE THEREFORE GUARANTEED—AND THE RESULT

On the other hand, in recognition of the "voluntary cooperation" which the "Badische Anilin" has agreed to supply, the French State agrees (Article 10) to pay in fees for building the sum of Five Million Francs, half of which is payable when the agreement becomes final and the other half when the plant is producing one-fifth of its total capacity. The fees will represent about five per cent of the cost of construction, which is the official fee recognized by all architects in France. In addition, the German company has the right to a variable royalty per kilogram of fixed Nitrogen, reckoned on the average price of the unit of Nitrogen (kilogram) contained in Chilean Nitrate of Soda, delivered c. i. f. at French ports. This amount will vary between 2% (when the price per kilo of Nitrogen is above or equal to five francs) and 4% (when the price per kilo of Nitrogen is above or equal to two francs). Let us suppose that the price per kilogram of nitrogen in nitrate of soda delivered at Dunkerque was not lower than seven francs during 1920 and that in 1913 to 1914 it was about 1.65 francs. This royalty is payable only from the time when the plant constructed fixes a minimum of thirty tons of Nitrogen per day. The French State agrees to keep secret all of the processes conceded (Article 6), to let the German Company profit equally from all the improvements which they make in the processes during the duration of the contract (Article 3); but it reserves for itself the right to substitute a private concern in all the rights and obligations of the agreement (Article 14). Finally, in the agreement which assures to the French State the most

advantageous conditions, it is specified (Article 10) that the French State would have the right to claim any more profitable agreements which the Badische might conclude in other contracts of the same kind.

The duration of the agreement is fixed at fifteen years (Article 12), dating from the time when production has reached thirty tons per day.

In conclusion, the French State has reserved for itself (Article 13), a period of three months for the final approval of the contract in order to be able to submit it for examinatioin to either certain Government or Parliamentary Commissions.

ADVANTAGES OF THE AGREEMENT.

The industrial value of the Haber Process has been proved. In 1917 the Badische produced 75,000 tons of Nitrogen; in 1918 it furnished 100,000 tons. In fact, in the two plants at Oppau and Mersebourg, it has more than doubled these figures. Besides, the manufacture should proceed without interruption; the recent catastrophe at Oppau cannot be imputed to the Haber tubes themselves, according to the opinion of Mr. Georges Claude himself. Mr. Claude attributes it to the explosion of a stock of explosives which consisted of certain accumulated nitrated salts.

One of the capital articles of the agreement is Article 2, by which the Badische agrees for the duration of the contract, to exploit its processes neither directly nor indirectly, neither in France nor her colonies.

IS NOT OF SLIGHT INTEREST—AGAINST GERMAN COMPETITION.

The policy of the French State was to assure itself of a production of Nitrogen amounting to 100 tons per day in a plant removed from the whole war zone. In this respect, the power plant at Toulouse

already operating, lends itself admirably to the role designed for it. In no other way could it accomplish these dreamed of results with the same security and the same rapidity of organization; in no other way could it operate to such good account, a plant producing 100 tons.

Finally, in the explanation of the reasons behind the plan which is submitted to us, the general facilities of the Toulouse Powder Plant are enumerated, which could be advantageously used for the new manufacture; railroads, repair shops, storehouses for machinery and raw materials, heating plant, central station, plumbing, etc. We have here a group of installations which cost us very dear during the war and which up until now we have not been able to use during times of peace.

Calculation of Royalties per Kilo of Nitrogen Payable to the B. A. S. F.

The figures of two francs, three francs and six francs per unit of Nitrogen, which are calculated as royalty for the B. A. S. F. (Article 10 of the agreement of November 21, 1919) correspond respectively to 100 kilograms of Nitrate at: 31 francs, 46.50 francs, 93 francs.

In 1921, Nitrate of Soda which was worth 105 francs per 100 kilograms on January 1st, went up to 116 francs in March—April, and was maintained above 100 francs until May; from this time on it fell regularly down to 75 francs, which was the price in November and which remained without appreciable change until the end of the year.

The average price of Nitrate was above 93 francs during the first half year and below 93 francs during the second half of the year. Thus, if a plant producing 100 tons per day had functioned in 1921, the royalty would have been:

0.12 x 18,000,000 plus 0.10 x 18,000,000 = 3,960,-000 francs supposing that the plant ran at full production throughout the whole year.

If the price of Nitrate of Soda returned to the pre-war price (27 francs per 100 kilos in 1913), the royalty would not be more than:

0.05 x 36,000,000 = 1,800,000 francs

supposing that the plant was running at full production. The minimum of 1,000,000 francs fixed as royalty is based in this case on the production of the plant at half its possible capacity. Until new conditions are met with, the royalty must obviously be determined at the rate of 0.10 francs corresponding to Nitrate worth between 46.50 francs to 93 francs per 100 kilos, which gives: 3,600,000 francs per year for a plant running at full production, or a selling price of One Hundred Fifty to One Hundred Eighty Millions of francs.

The royalties, therefore, correspond to about 2% of the sales.

Chapter V

The Powder Works at Toulouse During the War

Measures devised since the Armistice for its use.

The Powder Works Proper at Toulouse.

At the time of mobilization, the powder works at Toulouse occupied:

1. The southern part of the Island of Ramier in la Garonne (21 hectares, 57 ares), the northern part, the nearest to the city being occupied by the Toulouse Park.

2. In the Island of Empalot (south of Ramier), the part situated north of the railway from Toulouse to Bayonne, (18 hectares, 41 ares).

One Black Powder plant has operated for a long time in the Island of Ramier. Recently they have replaced one part of the Black Powder Plant situated in the extreme southern part of Ramier, by plants for the manufacture of Powder B and then the manufacture of Powder B was extended into Empalot.

In the midst of the Black Powder plants is found also a plant for the manufacture of detonating fuse.

According to the mobilization plans, the Powder Works at Toulouse was calculated to deliver daily, one ton of Powder B after the 31st day.

As in the other powder works, this program was greatly surpassed and the deliveries were increased at once regularly in consequence of improvements and supplementary installations without any actual extension.

Beginning with 1915, it seemed to be necessary to increase the production of Nitrocellulose, localized up to that time at Angouleme and Moulin-Blanc and they decided to add to the factory for the manufacture of Powder B at Toulouse, a factory for Nitrocellulose.

The fact that the Garonne was nearby was an important factor because they could without any trouble empty the residual acids into this stream.

The new factory for Nitrocellulose was built in the southern part of the Island of Empalot, acquired by the State before the war, separated from the factory for the manufacture of Powder B, already established in the northern part, by the embankment of the railroad from Toulouse to Bayonne. Care was taken, moreover, to place the acid factories at the extreme southern end of the island. In other words, as far as possible from the factory for the manufacture of Powder B.

From the very first they could manufacture daily, 20 tons of Nitrocellulose alone in this new plant. A little later the amount was increased to 60 tons.

Then this quantity no longer sufficed, but after the different sites in the region capable of being used for the erection of a new plant for Nitrocellulose and Powder B were investigated, they decided in October, 1915, in spite of disadvantages which an establishment of such great importance might offer, to erect a new factory on the left bank of the Garonne between this river and the road to Nuret, on the land known as Braqueville, which is made up of the alluvium of the Garonne, sand and gravel, thus lending itself perfectly to the purpose. The nitrocellulose plant was constructed opposite this plant at Empalot; the Powder B plant a little further on, that is to say, to the south; the Powder B plant was then in no danger of receiving the vapors from the Nitrocellulose plant, the prevailing wind in this region being a south wind which almost always blows in the direction of the current of the Garonne.

The new Powder Works called Braqueville, was designed to manufacture daily, 60 tons of Nitrocellulose and as much Powder B.

At the same time, the part of the Island of Ramier which remained for the manufacture of Black Powder underwent great modifications. In one part they maintained a factory for the manufacture of Black Powder, principally a special powder for fuse tubes, which were brought over at the end of August, 1914, from the Powder Works at Bouchet, but at the same time they installed a fuse tube plant themselves (3,600 large tubes per day) and developed the manufacture of detonating fuse from melinite (13 kilometers per day) and even installed a plant capable of producing daily, 60 tons of schneiderite, for use either in existing battle ships or in new ones.

Then at the beginning of 1916, the construction of a Sulphuric Acid plant, lead chamber process, was undertaken, with Gaillard concentration apparatus,

which could produce per day, 120 tons of 98% acid. In the month of September following, they decided to double the capacity of this factory which, however, was not carried out on account of the decrease in the need for Sulphuric Acid resulting from the production of Synthetic Nitric Acid.

The total production of the Sulphuric Acid plant at Toulouse was 22,385 tons.

In the early part of 1917, the construction of a Synthetic Nitric Acid plant was undertaken, designed to produce 150 tons per day of monohydrate. This construction was not entirely finished at the time of the Armistice but the production of Nitric Acid had commenced and had reached 25 tons per day. In all, they produced 2,275 tons.

Let us recall finally that the Nitrocellulose plant at Empalot had been provided with a plant capable of producing 12 tons at least of cotton to be nitrated per day.

To facilitate the service, a bridge for pedestrians and cars had been constructed, first of all over the upper Garonne to connect Empalot to the city of Toulouse. Then in 1918, a large bridge was constructed on the lower Garonne, immediately above the railroad bridge, or in other words, in addition to the Normandy Railroad, joining the two banks to the Midi Road, there was now a highway, which forms the extension of the bridge road, built over the upper Garonne, thus making an indispensable artery joining the different parts of the plant.

In conclusion, the Toulouse Powder Works proper, included within its own territory, several camps for colonial workers, mobilized men and workmen, and outside its territory included several annexations, namely:

An infirmary of 600 beds (the St. Agnes Infirm-

ary) built in the suburb Toulouse, nearest the powder works.

The powder magazines at Chapitre separated from the Powder B plant at Braqueville by the road to Nurat.

A depot for explosives at Miremont on the plain between the Garonne and the Ariege about a dozen kilometers away from the Powder Works.

The Toulouse Powder Works during the course of the war has organized between Bordeaux and Toulouse, several transportation lines by boats navigating on the canal lateral to the Garonne; to better this mode of transportation they have constructed a certain number of reinforced concrete boats.

For the transportation of the personnel they organized between the station at Toulouse—Matabiau and the Powder Works, a system of work trains and they extended two lines of electric cars, one on the right bank going to the entrance of the powder works at Empalot, the other on the left bank going to the powder works at Braqueville.

USING THE INSTALLATIONS AT THE TOULOUSE POWDER WORKS.

1. Program of 1919.

(a) Let there be reserved for the needs of the Powder Service the following plants:

The Black Powder plant at Ramier (formerly a powder works).

The Powder B plant at Empalot (formerly a powder works).

The Nitrocellulose plant at Empalot.

The Synthetic Nitric Acid Plant.

The Sulphuric Acid Plant.

Supply Magazines of the Nitrocellulose factory at Braqueville to be used in construction of a superphosphate factory.

The production of super-phosphate should at first reach 200 tons per day, using thus one-third of the maximum capacity of the Sulphuric Acid plants. Then it should be increased to 600 tons per day.

This project was abandoned, credits demanded, not having been granted.

(b) Let there be allotted and sites chosen conforming to the decisions of the Reorganization Commission for plants of the Powder Service, the parts of the Toulouse Powder Works, designated below:

The Powder B factory at Braqueville.

The Nitrocellulose Factory at Braqueville.

A preliminary competition, announced with a great amount of publicity, was closed on July 15, 1919 but all the offers received showed only a mild interest.

The location was then left open but no industrial concern has submitted any acceptable offers.

2. Program of 1920 in course of execution.

(a) The principal point is for all powder works to keep in operation, all the plants capable of insuring the production of powder and explosives of war for which they have been established, except such parts of the plants which are perhaps operated under unsatisfactory conditions from the point of view of expenditures for labor, as well as for raw materials, transportation between shops, etc.

(b) All accessory installations should be sold, such as barracks, laundries designed for the temporary use of the workmen imported there during the year (mobilized men and colonials), and such installations which could be rebuilt within a short time.

(c) All materials and supplies indispensable to manufacture during a period of three months should be kept and everything that could not be procured or replaced quickly by purchase or requisition, with the

exception of such substances as are susceptible to deterioration during storage.

These general regulations should be modified by the following exceptions in the case of the Toulouse Powder Works.

(d) Manufacture of Synthetic Nitrogen Products at the Toulouse Powder Works—Part of the Toulouse Powder Works which it is planned to use in the project now submitted to us comprises:

1. The Nitrocellulose factory at Braqueville (about 45 hectares).

2. The Sulphuric Acid plant (17 hectares, 58 ares).

3. The Synthetic Nitric Acid plant (26 hectares, 81 ares).

I. The Nitrocellulose Factory at Braqueville.

The special apparatus for the manufacture of Nitrocellulose has been put out for sale but all the installations for general services should be retained (steam, water, electricity, repair shops, railroads, rolling stock, etc.) as well as all the materials of construction which can be used in any way.

On the site of the Nitrocellulose factory it has been planned to construct an Ammonia plant proper.

Among the buildings and installations of this factory already existing, the following should be used:

The usual railroads having a total length of 15 kilometers.

The Receiving Station for 55,000 volts and the transformers for 13,000 volts of electricity and most of the distributing cables for the latter current.

The Pumping Station in the Garonne and the Filtration Plant which is able to supply 2,000 cubic meters per hour, the general distributing reservoir and the water plants.

The heating plant (10 furnaces with 500 square meters of heating surface can produce a total of 80,000 cubic meters of steam per hour).

The building for the use of the personnel, (dressing-rooms, garages and bicycle sheds).

General storehouses (20,000 square meters of covered surface).

Repair shops and work shops (45 x 70 meters).

In conclusion, the metal framework of a certain number of Nitrocellulose factories could be taken over for the construction of the new Ammonia plants.

II. The Sulphuric Acid Plant.

This plant comprises 24 pyrites furnaces and six lead chambers. The Sulphuric Acid produced in this plant (200 to 250 tons per day) will be utilized for the transformation of a part of the Ammonia produced into Sulphate of Ammonia (fertilizer).

III. The Synthetic Nitric Acid Plant.

This factory was designed for the transformation of cyanamide into Ammonia and the oxidation of this Ammonia into Nitric Acid. It should produce 150 tons of Nitric Acid Monohydrate per day (corresponding to about 35 tons of Nitrogen).

A third of this installation has been put up, but the material for the complete installation is on hand and will be utilized for this purpose, with the exception of the plants for the transformation of cyanamide into Ammonia, which will be useless since Nitrogen will be fixed directly in the form of Ammonia.

TEMPORARY DISPOSITIONS.

Because no agreement could be reached regarding the location, and while the confirmation of the program of 1920 explained above was awaited, the allocation of the Toulouse Powder Works described above was provisionally put in the hands of the Ministry of War and of certain foreign departments who were looking for storehouses for certain material.

I. ARTILLERY SERVICE.

Three refectories of the Sulphuric Acid Plant at Bracqueville.

Three Nitrating Plant } Of the Nitrocellulose
Four Cotton Plants } Plant at Empalot

This occupation was made subject to a temporary and revocable agreement.

II. POSTAL TELEGRAPHIC AND TELEPHONE SERVICE.

A locker room of the Powder B plant at Bracqueville, rented at 5,000 francs per year.

III. SERVICE OF THE BUREAU OF INDUSTRIAL RECONSTRUCTION.

Four Cotton Plants for the manufacture of guncotton at Bracqueville, rented at 12.50 francs per day per plant.

Three buildings have been vacated by the occupant and the fourth will be so shortly.

CHAPTER VI.

APPROVAL OF THE AGREEMENT OF NOVEMBER 11, 1919.

The Objections—The Battle for the Acquisition of the Haber Process.

An agreement, the text of which we have reproduced above, was passed on November 11, 1919, be-

tween the Ministry of Industrial Reconstruction and the "Badische Anilin and Soda Fabrik" for the purpose of manufacturing Synthetic Ammonia.

Should Parliament approve this agreement?

Should it authorize its execution by the Ministries interested?

Such is the first question which is placed before us, as raised by the first article of the case filed by the Government.

It seems that there should be no possible doubt: We have shown the great advantages of the contract obtained from the "Badische" through the diplomacy of M. Loucheur.

If yields from German soil are compared with the production of French soil, one is stupefied to see that the poorest soil of the Germans produces 1.920 kilos of wheat per hectar, 10.350 kilos of potatoes per hectar, while the other, ours,—and our richest!—yields only 1.380 kilos of wheat and 7.240 kilos of potatoes per hectar!

The author of "Pour Renaitre" (To be born again) an excellent little popular book the reading of which we recommend to those who wish to gain some idea of the vital problems of our country, quotes this passage from a report made to the Dresdner Bank a short time before the war:

"From the point of view of intensive cultivation of the soil, Germany stands at the head of agricultural countries. This position is the more remarkable, since the quality of her soil is inferior in several respects to that of other countries. The good yields of the harvests in Germany must be attributed to the encouragement of scientific methods in agriculture, the education of the farmer, and to the extensive use of chemical fertilizers."

Here are the figures which speak for themselves:

"With a considerably smaller cultivated territory (48% against 59% of the total area, which is about the same in our two countries), Germany consumes 485 millions of francs worth of chemical fertilizers, and we only 208 millions. While Germany uses 2.070 kilos of sodium nitrate per square kilometer of cultivated earth, and England 1.900 kilos, France uses only 1.030 kilos."

Let us generalize and replace the words "nitrate of soda" with the words "nitrogenous fertilizers." Let us recall that the figures cited above agree with those that were furnished us as official statistics: we will then have the key to our inferiority, due at once to our farmers' excess of confidence in the intrinsic virtues of the soil which they have inherited, and to the backwardness of our industry.

We have noted, and our colleague, M. Victor Boret has noted the same in his eloquent pamphlet "Pour et par la terre" (For and by the Soil):

"The Germans launched the war only when their industry was able to guarantee them a production of synthetic ammonia sufficient to care for military and agricultural needs."

Dr. Bosch, Director of the Badische, told only a short time ago of the difficulties which he had to surmount to operate the Haber process:

"It is only by separate experiences, in infinite number, that we were able to carry out this process of manufacture. It is necessary to learn how to handle enormous quantities of gases; any derangement in any place whatever affects the whole apparatus. If in the first place the handling of combustible gases under ordinary pressure does not work out at all, the

difficulties and dangers of using gases under pressures of 200 atmospheres, increase to an enormous extent.

"At times, it was necessary for us to spend hours of hard work before we had conquered the forces of nature and made them work our will."

It can be affirmed—and there is no protest against this fact—that the plants at Oppau have been an essential factor in the German resistance—as much on account of their war production as for the feeding of the German population.

Would we not have been criminals if we had not profited by these circumstances which permitted us to treat with Germany and to acquire the secrets of the manufacturing processes of the Badische?

We could indeed have gained possession during the war of the patents and descriptions of the Haber process; but no scientist, either in France, or in England, or in the United States, would have known how to use them industrially or how to design a plan of manufacture comparable to that which the Germans had been able to work out.

The tour de main ("know-how") would have been lacking to us.

It is this tour de main which we have bought by the contract of November 11, 1919. The plant producing synthetic ammonia according to the terms of the agreement will be installed by German engineers, by German workmen, who have the secret of setting up and operating the plants at Oppau and Mersebourg. We will be certain of being able to realize *in a single plant* a daily production of 100 tons of Nitrogen. Finally, thanks to the prohibitory clause provided in the contract, we will be protected against German competition, against which we could not hope to struggle because she is favored by the low price of labor and raw materials, by the advantage of her acquired speed, by the size of her production, etc.

There should, therefore, be no hesitation: We ought to approve the agreement of November 11, 1919, advantageous to us in every respect; and conforming to Article I of the project which is submitted to us, we ought to authorize the proper Ministries, the Ministry of War, the Ministry of Finance and the Ministry of Agriculture (and not only the Ministry of War as the text of the government demands), to execute this agreement.

* * *

But how should we carry out the industrial and financial application?

Here the difficulties commence.

"1. You have acquired the German process—some tell us—that is good. But it is necessary to guard against appearing to let the German process stifle French processes by according it to the exclusive patronage of the State, or indeed any other processes—however capable of competing with it to advantage—and you must guard against seeming to furnish German science and industry with a patent of world-wide superiority.

"2. The agreement of November 11, 1919 is a conquest of war. You have obtained it in the course of parleys which have followed the Armistice. It is, therefore, the fruit of the sacrifices of the nation. It would be unjust for a private firm to receive all the profits, especially if you permit the latter to use for its exploitation this powder works at Toulouse, which has been so burdensome for us to install during the War and which is national property.

"3. Finally, we have reason to fear that this concession granted to a private firm gives rise to a *trust* by law and deed, thanks to the great advantage which the support of the state would give it, and it would soon have control of prices, of the market and of production."

These objections could not fail to arrest the attention of your commission.

A work such as that of M. Georges Claude ought not to be under estimated. M. Georges Claude is a man of whom French science is justly proud. We would be extremely ungrateful if we sacrificed him in the struggle which he has undertaken against what he called during the course of our visit to Montereau, "a German tank, the tank which wants to swallow up everything, the tank of ammonia synthesis." Other processes such as the Casale process also give interesting results. It would not enter anyone's mind to deny this, neither at the present nor in time to come.

On the other hand, if the state supports a company exploiting the benefits of the agreement of November 11, 1919, and using, moreover, the powder works at Toulouse, it is right that the state should share to a large extent in the gains which this company shall realize.

Finally the fear of a possible trust among the groups interested in the production of nitrogen is justified by a glance at the negotiations entered into since 1919 between the officials of the Powder Direction and the representatives of these groups; our report would be incomplete if it did not include all of the these phases of the question.

Upon the cessation of hostilities, French industries interested in the production of nitrogen had decided to unite their efforts for the acquisition of the Badische processes, in order not to make a burdensome competition among themselves; they had decided to constitute themselves a company called "Societe d' etudes de l'azote," the administrative council of which would comprise:

La Societes des produits chimiques de Saint-Gobain;

La Compagnie des produits chimiques d' Alais et de la Camargue;

La Societe des produits azotes;

La Societe des mines de Lens;

La Societe anonyme "L'Air liquide";

La Societie d'electrochimie;

La Societe generale des nitrures;

MM. Gillet et fils, de Lyon;

Les Etablissements Kuhlmann;

La Compagnie nationale des matieres colorantes;

M. Emile Lambert;

MM. Schneider et Cie.

La Societe chimique des usines du Rhone;

La Compagnie des mines de Bethune.

The company had for its principal object: "The purchase and ownership of all patents and licenses for the manufacture of synthetic ammonia, the operation of these patents and licenses, the conclusion of all treaties and agreements for the purpose of their exploitation or utilization."

According to its constitution the company opened negotiations with the Badische for the acquisition of its processes: it received for this purpose the official support of M. Loucheur, then the Minister of Industrial Reconstruction, charged with the control of economic conditions according to the Treaty of Peace, who, for this reason, enjoyed great influence among the German industries. The intervention of the French state in this case was all the more useful and even necessary because the terms of Article 297 of the Peace Treaty reserved to the Allied Powers or their associates, the right of retaining or liquidating all property, rights and interests belonging to German aliens. The patent relating to the processes of the Badische including certain property rights and

interests of the Germans could be retained by the French state or liquidated by it at will; with the result that no license of these patents could be valid without the consent of the French State.

The Government estimated morever that it was in its interest to encourage as far as possible the creation of a nitrogen industry on French territory. That is what M. Clemenceau, President of the council specified in the discourse which he held at Strasbourg on November 4, 1919 and in which he recognized as one of the aims which should be followed out the development of our production of atmospheric nitrogen and the creation of plants operating along perfected lines assuring us ammonia and nitrates at prices below those for natural nitrates, so that we can stop all payments in gold from this department.

It was then agreed between the Ministry of Industrial Reconstruction and the Administrator of the company charged with entering upon the negotiations that the contract to be made with the Badische should be made in the name of the French State, and this latter contract superseded the one made with the company and in it was inserted the clause that the state should share in the profits accruing to the owner of the patents.

The conferences held for this purpose with the Badische being about to end, the Ministry of Industrial Reconstruction charged the Director of Powder, assisted by Comptroller General Mauclare, to pass the final contract in his name.

The text of this contract was attested in the presence of M. Mauclare, the administrator of the Societe d' etudes de l'azote, M. Bletry, engineering counsel in the matter of patents, and signed by the Director of Powder, November 11, 1919.

After the contract had been signed, the Ministry of Industrial Reconstruction, not wishing to favor a single group, appealed to all who might be inter-

ested to exploit this contract. As a result there was inserted in the Journal Officiel, for November 26th, a notice which reads as follows:

NOTICE.

Manufacture of Synthetic Ammonia.

"The Ministry of Industrial Reconstruction is disposing of certain processes relating to the manufacture of synthetic ammonia and its derivatives. The license of these processes is capable of being ceded in accordance with terms determined upon, to French industrial concerns interested in these products.

The companies or industrial men interested should inquire of the Direction of Powder, 147 rue de Courcelles (office of the Director), from December 1st to 12th."

Many requests for information were received: But the only definite propositions received came from a group formed by the Societe d' etudes de l'azote, which we mentioned above, but from which a certain number of members had withdrawn.

Let us notice especially in this connection (for we will have occasion to return to it), the two letters received from the Societe chimique de la Grande —Paroisse, owner of the patents of M. Georges Claude.

Paris, December 2, 1919.

The Director.

Dear Sir:

Following the visit which I made with you we would be greatly obliged to you for any information you may be willing to give us, as soon as possible, regarding the conditions under which the license for the manufacture of synthetic ammonia and its derivities could be ceded to French industries or companies. Our comapny would indeed be interested in this question.

Please accept, dear sir, the assurance of our esteem.

Le President du Consul d' Administration,
(Signed) OLIVER.
Paris, December 12, 1919.

The Minister of Industrial Reconstruction,
(Direction of Powder)

Dear Sir:

We have examined with the greatest interest the "notice regarding the conditions for ceding a process for the manufacture of synthetic ammonia," which you were kind enough to send us by telegram #22501 on the fifth of this month.

We ought to state that our company which already possesses the Georges Claude patents could not accept the conditions of this ceding of the processes for evidently they remove every possibility for allowing us to exploit the aforesaid Claude processes as we should.

In consequence, we have the honor of informing you that we are obliged to decline to put ourselves in the ranks for the acquisition of a license of a German process for the manufacture of synthetic ammonia. Please be assured, dear sir, of our esteem.

Le President du Consul d' Administration,
(Signed) A. OLIVIER.

At the same time the two companies at St. Gobain and the l'Air Liquide, the founders of the Societe Chimique de la Grande-Paroisse, withdrew from the Societe d'etudes de l'azote, making it known that after the publication of the above notice in the Journal Officiel, the purpose which they had in mind, when entering the latter company, could no longer be attained.

The Societe d'etudes de l'azote, which in its letter of December 8, 1919, had made it known that

it was disposed to enter in the combination to exploit the contract, thus found itself disorganized. But a certain number of its members formed a more limited group; and on January 3, 1920 the Etablissements Kuhlmann informed the Minister of War, as follows:

"A group of commercial companies comprises the Etablissements Kuhlmann, the Societe des mines de Lens[1] and the Societe Solvay et Cie was ready to study with this help, the conditions for ceding processes relating to the manufacture of synthetic ammonia and its derivatives." To this group on February 3rd following were added the Societe des produits and Societe d' electrochimie."

The Director of Powder was forced to create an alliance between this group on the one hand and the group which operated the Claude processes. The Director of Powder brought together in his office on March 6, and March 12, 1920, the representatives of the two opposed groups for the purpose of finding common grounds for an alliance. This alliance was necessary; for the cession to the first group of exclusive rights to the patents of the Badische would have placed it in position to attack the second group in the civil courts, if as may be supposed they thought that the Claude processes were included in the processes covered by the patents of the Badische.

A complete alliance could not be brought about; the Kuhlmann group proposed that the Badische and Claude processes should be considered together, or that an exchange of licenses should be made.

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[1] The Societe des mines de Lens had entered into the combination with the idea of constructing a new plant which would consume large quantities of coke, in the neighborhood of the new coke plant which the Societe de Lens proposed to construct with the pecuniary resources furnished by the war damages.

But the Claude group under the leadership of M. Mahoursier, Commercial Director General of the Societe de St. Gobain, saw as the only common basis for an alliance, a commercial agreement by which the Claude group would have the right to furnish one-half of the Ammonia fertilizers used in France; if it was not furnished in this proportion, it would have the right to cancel the whole quantity delivered by the other group. The latter objected that they could not grant seeming rights to owners of a process which still rested "only upon hopes" and had not yet been operated industrially.

In the meeting on the 6th of March, the Claude group presented the following declaration:

"The Claude Processes group, speaking as much in its own name as in that of other future inventors, declares that it is not possible for it at present to know whether in the development of the processes being studied, it will be led to make use of certain details covered by the patents of the Badische, and it declares that if such is the case, an exclusive license of patents owned by the State and ceded to another company would have the effect of hindering the development of new processes of the greatest interest to the nation."

In the meeting of March 12th, the same group made the following declaration:

"The Claude Processes group calls attention to the fact that the Badische patents appear to be concerned very much more with the purpose of forming a threat of attack against all inventors who approach the question of Snythetic Ammonia than with the purpose of informing the technologist of an industrial process clearly and definitely. Professor Matingnon has elsewhere confirmed this clause in his address of March 16, 1918, to the Societe de chimie industrielle.

"However, the Claude group will raise no objec-

tion whatever against granting of an exclusive license to another group upon the condition that it be assured that the realization and development of its processes will in no way be impeded through opposition from the or against the cession by the State to this latter group patents which are the object of this license."

The Director of Powder then demanded of the Kuhlmann group if he should agree to sign the following condition which could be inserted in the grant:

"Relative to what specially concerns the patents held by the Badische Company in France for the manufacture of Synthetic Ammonia, the exclusive license of which the State granted to the Kuhlmann group, the latter declares that in no case will it protest either against the indifference of the State to the exploitation of the aforesaid patents by the Claude Processes group or against the cession by the State to this latter group of a license to exploit said patents."

The Kuhlmann group replied that for purposes of conciliation it was disposed to accept this ruling in principle, provided a more careful examination of the question was made at the time when the final contract of the cession should be drawn up; but that in any case it would insist on the cession of an exclusive license by the contract in regard to everything which did not touch directly upon the patents alone.

We will see later on how the discussions were subsequently continued with this latter group.

But on January 29, 1923, M. Andreau Lefevre, Minister of War, decided that: "There was reason to obtain, if possible a prolongation of the time for consideration until April 1, 1920, and in the interval a company should be found which would agree to construct its plants on territory less exposed than the neighborhood of Lens, on account of the possibility of a new war." At every stage of the case, the Minister gave his opinion that it would be opportune to con-

tinue the case of the contract, provided the Parliamentary Commissions would take hold of it.

This decision in regard to the location of the plant caused a new delay in the negotiations with the interested industrial groups; for the Societe des mines de Lens, whose entry into the combination was subordinate to the interest which that company had in seeing the new plant erected in the Lens region with the payments received by the French State as war damages, immediately withdrew from the group as soon as the decision of the Minister of War had been made known.

Nevertheless, the two other participants (Kuhlmann and Solvay) with whom had now joined the Societe des produits azotes and the Societe d' electrochemie, showed themselves disposed to pursue the enterprise alone, the more so because the prospect of installing the operating plant in a part of the Powder Works at Toulouse, which the State proposed to put at their disposal, seemed to them to compensate for the disadvantages which the arrangement might have involved from an economic point of view.

Such was the state of affairs on March 13th, when the Societe Solvay made known that, following negotiations in America, it was no longer interested in the Badische processes, for it proposed to enter a group which would compete with the latter in the whole world and which was using the processes of the General Chemical Company. When the Solvay Company had taken this stand and had entered into the manufacture of Synthetic Ammonia with a competing group, cost what it might, and considering moreover, the existence of the St.-Gobain group, and the fact that l'Air Liquide was following out the same purpose with the Claude processes, the Etablissements Kuhlmann, isolated as they were between two groups having at their disposal considerable resources in money, refused to assume the financial responsibility for gather-

ing together the large amounts of capital necessary to the exploitation of the contract passed by the State with the Badische; they feared, they said to set up the name of Etablissements Kuhlmann with Economy for the partner upon whom it would be necessary to call, against all the hazards of competition with two important groups.

However, after an interview between their representative with M. Andre Lefevre, Minister of War, they declared that they realized the great importance of the rapid creation of an industry for the manufacture of nitrogenous products from the point of view of general defense, and at the same time, they realized that the process should be used which alone had shown practical and industrial proof of its value, and that they were, therefore, ready to aid the state in exploiting the contract with the Badische, giving all their technical help, either in the form of direct or interested management.

In the interval the Societe l'Air Liquide, owner of the Claude processes had estimated for the first third of the year 1919, that the "expense of the attempts to put these processes into operation was too heavy for its resources alone[1] and it therefore had called upon the Societe de Saint Gobain for help." With the aid of the latter they had formed the Societe Chimique de la Grande Paroisse, nitrogen and chemical products, with a capital of 14,000,000.[2] To this Societe, l'Air Liquide bought for a sum of about 8,000,-

[1] Report to the General Assembly of Stockholders, June 28, 1920.

[2] Increased to 34,000,000 francs in 1920. The Administrative Council of the Societe was composed of M. M. Alivier Armand, Administrator of the Plant for chemical Products at Saint Gobain, Pres.; A. Brocq, Administrator of the Societe l'Air Liquide; G. Claude, Administrator of the Societe l'Air Liquide; L. Roland l'Estape, Administrator of the Society l'Air Liquide and of the Gas Company of Marsielle; B. de Verges, Administrator of the Plant for Chemical Products at Saint Gobain; Delage, Technical Director of the Plant for Chemical Products at Saint Gobain; F. Mahoussier, Business Director of the Plant for Chemical Products at Saint Gobain.

000 francs, its plants at Montereau, as well as its investigations, works and French patents relating to the synthesis of ammonia. The foreign patents corresponding to these French patents remained the property of l'Air Liquide, with the facility of disposing of them by sharing with the Societe Chimique de la Grande-Paroisse the profits obtained, either by exploitation direct or by ceding the licenses, or by ceding the patents themselves.

Let us say immediately that the foreign patents (1) have been ceded for a remuneration of 50,000 shares at 100 francs, or 5,000,000 francs, at nominal value. (These shares bear certain special rights of voting by which entire control of the Societe Centrale through the Societe l'Air Liquide is assured to a new special company "Societe Centrale des Industries de l'air Liquide et de l'Azote", founded with a capital of 5,000,000 brought in a short time to 25,000,000 francs.)

The Claude processes were then exploited by two companies having at their disposal capital raised to a total of 59,000,000 francs, supported by the two companies, l'Air Liquide and Saint Gobain, the resources of which are considerable.

On June 25, 1920 M. Claude came to see the (2) Director of Powder, and after having referred his recent communications and publications he demanded of the latter why the Powder Service persisted in supporting the agreement signed with the Germans instead of promoting a French process, the superiority of which had been demonstrated. The Director of Powder answered him that his personal opinion based on exact figures did not permit him to agree conclusively; a discussion followed between the two representatives on the different elements entering into the cost price. M. Claude laid stress on the fact that in the case of selling his processes abroad he found himself in a false position due to the fact that the French

State had entered into negotiations with a German Company and seemed in this way to proclaim the superiority of the latter's processes, to the great damage of French capital engaged in the other process. He asked the Director of Powder if it was not possible to demonstrate in one of the plants belonging to the Service, in order that he might be able to say that the French State had made a comparison of the two systems.

The Director of Powder answered that he was entirely ready to go about things in this way, so that he might lend whatever aid possible to French capital which was engaged in the Claude processes; if reasonable proposals were made to him from a pecuniary standpoint, he would hasten to propose to the Ministry to set up a Claude plant for the production of 5,000 tons per day at the Powder Works at Angouleme, which was capable of utilizing the ammonia thus obtained.

M. Claude declared himself satisfied with this proposition. But the Director General and the Administrative Council of his Company (de la Grande-Paroisse) refused to follow up this proposal; and the Director of Powder never received the proposition which he had declared himself ready to consider seriously.

Finally, let us note that at the time when the agreement was concluded with the French State, the Badische was entering negotiations with the Solvay group for the cession of its processes under a contract which included a sharing of profits. If these conferences had been finished there would, without doubt, have been formed a combination between the Societe Solvay and the Badische for the installation of an ammonia plant at Dombasle (Meurthe & Moselle), where the Societe Solvay possesses the largest French soda plant; this is the more likely because the combination

of the manufacture of soda and ammonia makes possible a considerable reduction in the price of the former and of the ammonia salts. If, therefore, the manufacture of ammonia had been installed in France without the intervention of the French State, it is probable that it would have been done at Dombasle (Meurthe & Moselle), with the aid of the Societe Solvay. This result would have assured the supply of nitrogenous fertilizer to the Northern and Eastern regions; from the economic point of view, it had the terrible disadvantage of making this industry subject to a Belgian company, which already holds a monopoly in the soda industry of France.

• • • •

It was necessary to recall all the phases of the struggle engaged in by the groups concerned with the acquisition of the Haber patent, to show the disturbances which could arise in the possible alliance of former competitors. There have been too many negotiations, too many fluctuations from one camp to the other, for us not to be atonished at the sudden calm on the field of battle, at the silence of the belligerents. Are they preparing for concerted action? Have they passed any treaties? Can they not conceive that certain diplomatic forces are at work? And, if a pact is formed by all those who formerly demanded a concession, is it not to be feared that the public will not pay the price demanded in the market? Is it necessary to allow a private firm to become master of the market for a commodity, the price of which we wish to see diminish in order to obtain the greatest advantage for our agricultural development?

Such are the questions which your commission was duty bound to consider when it undertook the examination of the financial combinations capable of exploiting the agreement passed with the Badische.

Before examining the combinations proposed it seemed interesting to us to cast a glance over the financial statement of the Badische Anilin.

The latest statement we were able to procure is that of 1921.

Chapter VII

The Financial Statement of the Badische Anilin und Soda Fabrik for 1921

Accounts for the Fiscal Year 1921 of the Badische Anilin und Soda Fabrik

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Report of the Management Council and Administrative Council

49th General Assembly held Wednesday, May 24, 1922 at 11 o'clock in the offices of the Banque Rhenane de Credit at Mannheim.

Order of the Day

1. Presentation of the report on management by the Committee on Management, accompanied by the statement and account of profits and losses as of December 31, 1921 and the report of verification by the Administrative Council;

2. Vote on the approval of the statement and the distribution of profits;

3. Assignment of indemnity to the Management Council and the administrative Council;

4. Election to the Administrative Council.

Report of the Administrative Council.

In the course of the business year 1921 our enterprise was struck by a terrible catastrophe. On

September 21, at 7:30 in the morning, in the Oppau plant which was running at full capacity, an explosion occurred which reduced to ruins a large part of this establishment.

In regard to the large extent of the uncovered damages outside the plant, we have decided upon agreement with friendly firms to put certain supplementary subsidies at the disposal of the State Department, which is done especially for the purpose of covering those damages to installment and workmen, the payment of which requires outside cooperation.

Thanks to the initiative energy of those who are cooperating with us, it has been possible since the month of December 1921, to put into operation the factory for the manufacture of ammonia at Oppau, which the explosion had undoubtedly affected very much but to a lesser extent than the other parts of the plant; and since the month of February of this year, we have put it in full running capacity. It is for us an imperious necessity to express our thanks and gratitude to all the employes and workmen who took part in this energetic and common work. On this account we have been in position to keep our very numerous workmen continuously at the work of reconstruction, and have been enabled to reduce to a minimum the deficit in our production of Nitrogen, as well as the financial losses in that connection.

The construction of the Merseburg plant during the course of this same year has made satisfactory progress. The plants here have also attained their full production capacity, up to the present time. Allowing for the fact that the transfer of the ammonia plants at Merseburg-Oppeau (A company of limited responsibility) to the rental book of the factory at Merseburg has been delayed, this plant has again been entered on our account at the time of this report.

The cost price of nitrogenous fertilizer products

remained unchanged with us from March 1, 1920, to the end of May 1921. From this time on, the progressive increase in salaries and in the price of materials necessitated several increases in price. However, at the beginning of April, 1922, the price of ammonia sulfate delivered free at the place of consumption consequently included the cost of transportation which had considerably increased, and still reached only 31 times the price of peace times, whereas the price of oil at the mine including the tax had risen to about 60 times the pre-war price. At least the considerable advantage which German agriculture and with it the whole of German economic life derived from the enormous domestic production of nitrogenous fertilizer which we put on the market can be measured *if it is realized that agriculture would actually have had to pay for foreign nitrogen about 2 1-2 times the German domestic price.*

The gain from the exploitation of our nitrogen product is unfortunately liquidated by a loss from the explosion at Oppau.

In the domain of dyestuffs, the sale which toward the middle of the year was somewhat arrested in all countries, is now getting steadily better; in the last quarter of the year, exportation especially developed in a very satisfactory way, so that the financial statement shows up more favorably than had been expected.

On account of the lack of coal and coke, necessarily affected by the deliveries on reparations, we have suffered very greatly during this fiscal year. The deficit resulting from this cause especially as it concerns the ammonia industries, is the more regrettable since the demand for nitrogen at the present season cannot be entirely satisfied. The consequence of this has been that farmers' organizations have been required to import nitrogen at the high foreign prices.

By virtue of an agreement passed between the

owners of parts of Leopold Cassella & Company (A company of limited responsibility), at Frankford on the Main, with the other I. G. firms, the latter have taken back the greater part of the principal capital of the Cassella firm in exchange for shares of their own stock.

The increases in our common capital stock which were stopped by the extraordinary general assemblies of May 1, 1921 and January 10, 1922, have been executed and signed at the Register of Commerce. Our common capital stock amounts actually to 440,000,000 marks; preferred shares to 30,000,000 marks.

In the course of the fiscal year, 86,000,000 marks in round numbers were expended for the assistance of workmen and employes. Of this sum 10,400,000 marks were voluntarily disbursed and 75,600,000 marks in compliance with the laws.

The capital of the pension reserve for employes amounted at the end of 1921 to 33,476,987 marks. The new regulation of the situation for members of the Pension fund was based on the recommendation in the preceding annual record. After the compensation operated by virtue of the I. G. contract we are in a position to enter for the year 1921 a deduction made on the necessary amortizations, a net profit of .....165,261,933 33 marks

By adding the amount of the 1920 profits to this; 3,483,145 25

the General Assembly disposed thus of a profit which amounted to 168,745,079 78

In interpreting these figures it is necessary to take into account the important decrease in value of the mark.

Translated into gold marks the balance remains

far behind the figures for the years before the war. Whereas for each of the years 1912 & 1913 10.08 million gold marks could be distributed, the dividend proposed for 1921—converted on the basis of a market value in dollars of only 200—amounts to 2.5 million gold marks, that is to say only one quarter. In this calculation the interest has not been counted which accrued on payments on capital that had come due in the meantime to the stockholders, payments which were necessary in the years 1914-21 on account of the great extension of our nitrogen enterprises.

The common stock capital was raised from 36 million gold marks to 400 million gold marks. If the increase in capital is represented in terms based on the market value of the dollar on the day of the payments in gold marks, the result would show an increase of capital amounting to 65 million gold marks.

The capital expressed in gold marks has therefore been tripled since 1914, speaking in round numbers, while the dividend has fallen to one-quarter. On the common stock capital of 100 million gold marks paid up to the end of 1921 the dividend therefore amounts to 2½%.

If, on the contrary, we compare the dividend with the salary index the result would actually show that salaries are 42 times as great as compared to the latest pre-war figures; the sum of the dividends, on the contrary, was only 12 times as great, it being understood here also that no account has been taken of any kind of interest on the 364,000,000 marks for supplementary payments on capital made by the stockholders.

These comparisons show how erroneous certain deductions are which are constantly being told abroad, and even inside our own country relative to the raising of taxes on dividends.

In the face of the continuous devaluation of the

mark, especially since the end of the fiscal year, there has occurred an increase in the salaries, in fees, and in prices of materials, which has gone in such leaps and bounds that industry and the general economic life have had to struggle against serious dangers in every respect. If we do not succeed in reducing the liabilities of Germany to an amount which can be paid off through the economy of the German people, and which is not harmful to the economy of the world, and if we do not succeed at the same time in making it possible in this same connection to stabilize the changes, the most serious disturbances are bound to result in an economic as well as a social sense.[1]

REPORT OF THE ADMINISTRATIVE COUNCIL.

We invite your attention on every point in the report of the Management Council. The financial statement and the account of profits and losses have been verified by two of our members as to their agreement with the books and have been found correct.

We propose to distribute as follows, the net profit which was made	165,261,933 33	marks
First of all there will be deducted:		
An allocation of 5% of the net profit to the ordinary reserve fund	8,263,096 69	
An allocation of a new complementary fund established for employes pensions	20,000,000	marks

[1]We are publishing this report without commentary and we are not entering into the discussions which it can be expected to raise.

Ludwigshafen a/Rhin—April 1922

The Management Council.

An allocation to the completary fund for workmen's pensions	10,000,000	
3½% of the dividend on 30,000,000 marks worth of preferred stock	1,050,000	
4% of the first dividend (Vordividend) on 4,000,000 marks —Founders' shares	16,000,000	
Profit remaining	109,948,837 14	marks
Interest conforming to paragraph 13, figure 5 of the statutes	4,397,953 48	
Remaining profits	105,550,883 66	

There should be paid on this amount a superdividend of 26% on 400,000,000 marks. Founders' shares equal 114,000,000 marks, or in all a dividend of 30% or 180 gold marks per share at 600 marks, and 360 marks per share at 1200 marks.

The remainder of	1,550,883 66	marks
forms with the amount of the profits for 1920	3,483,145 95	
Total of	5,034,029 61	

To be carried without interest to the new account.
Ludwigshafen a/Rhin, April 1922.

The Administrative Council

(Signed) DOCTOR MULLER, *President*

ACCOUNT OF PROFITS AND LOSSES

Debit	Marks	Credit	Marks
General Expenses	90,994,577 66	Profit carried over from 1920	3,483,145 95
Interest	2,947,455	Net income in 1921	404,733,311 18
Amortization	145,529,344 69		
Profit carried over from 1920 3,483,145 95			
Net profits in 1920 165,261,933 83			
	168,745,079 78		
	408,216,457 13		408,216,457 13

BALANCE FOR THE YEAR 1921 AND AN ACCOUNT OF PROFIT AND LOSSES—BALANCE TO DECEMBER 31, 1921

Assets	Marks	Liabilities	Marks
Property, Bldg. utensils	202,751,756 87	Original capital stock	400,000,000
Participation in other enterprises	253,462,431 37	Preferred capital Stock	30,000,000
Goods in storage	331,454,542 18	Ordinary reserve	19,720,476 92
Debtors	1,273,319,684 31	Extraordinary reserve	36,340,000
Cash on hand, letters of exchange, holdings in banks, effects	329,392,272 48	Workmen's aid	10,463,135 70
		War invalids' fund	4,408,042 61
		Complementary fund for workmen's pensions	13,960,320 29
		Loans or obligations—	
		Series A—2,230,000 marks	
		Series B 13,022,000	
		Series C 50,000,000	
			65,259,000
		Dividends not touched by beneficiaries	2,002,272
		Obligations drawn but not touched	321,000
		Interest on loans not touched	1,823,225 25

Assets	Marks	Liabilities	Marks
		Creditors:	
		Long term contract	350,000,000
		Short term contract	1,251,562,769
		Provision for the pension fund for employes, and expenditure on absences	35,739,365 18
		Profits carried over	
		Marks	
		1920 — 3,483,145 95	
		Profit for 1921 165,261,933 83	
			168,745,079 73
	2,390,344,687 21		2,390,344,687 21

Chapter VIII

The Financial Combination Proposed by the Government.

Articles 2 and 3 of the Government plan offer a two part procedure.

A. The Minister of Finance and the Minister of War, through required publicity, will make an appeal to those who have a right in the grant, French commercial companies or private individuals.

It is announced that the part of the powder mill of Toulouse which can be used and the equipment suitable for powder service will be put at the disposition of the grantee.

These assignments are arranged under definite conditions by a book of regulations drawn up by a consulting commission comprising an equal number of representatives for the Minister of War as for the Minister of Finance.

B. If the required publicity is not given, if no

grantee appears who accepts the conditions of the book of regulations, then, as the agreement must be carried out and the program for the daily production of one hundred tons must be realized at any cost, a corporation of interested parties is arranged.

But for this it is necessary to go before Parliament to ask its authorization for the payment of funds by the State.

The first disadvantage of this procedure is immediately seen. The appeal to the claimants will take a certain time; if it fails, the Assemblies must be called again. Reports of commissions. Deliberations in the two Assemblies. A considerable loss of time. And during this time agriculture waits; national defense—who can foresee the events—does not receive its appropriations. There has been too much hesitation up to this time.

Let us examine the system more closely.

How will the Government arrange the proposed conditions What management will it offer the granters? How will its interest be paid. What guarantees will it offer the bondholders of the company if there are any. What benefit will the Treasury receive from the operation? What expenses will be incurred?

At the request of the Commission, the Administration has submitted to us the plan of the following regulations it has prepared.

The Regulations

Article I

The ceding of the exploitation by the contract passed November 11, 1919 by the Minister of Industrial Reconstruction, acting in the name of the French State, with the "Badische Anilin und Soda Fabrik" for the use of methods for the manufacture of synthetic ammonia and its by-products will be directed

by the regulations presented herewith, which will remain attached to the said grant.

The grantee must choose a legal residence. He will be depended on to form in the period of six months from date of the publication of the aforementioned decree, a joint stock company with a minimum capital of 10,000,000 francs all paid in, having for its principal object the carrying out of the contract provided for in the conditions fixed by these regulations and which will be called in the following by the name of "the Company."

ARTICLE II

The company will have its headquarters in France.

In agreement with these statutory conditions the President of the council of administration, as well as the manager elected or the director general, as the case may be, will be French.

At least two-thirds of the members of the council of administration will be French.

The normal term will be from January 1st to December 31st; the first term which will end on December 31st, will not be of less than nine months or more than twenty-one months.

ARTICLE III

The assignee entirely and completely supersedes the French State in all the rights and obligations of the contract of November 11th, toward the signatories of the contract as well as toward all third persons and he guarantees its execution. He shall reimburse the State within fifteen days from the organization of the Corporation mentioned in the last paragraph of Article 1, the sum of 2,500,000 francs, paid by the State to its co-contractor. From the time that this payment is effected the State shall notify all interested parties that the assignee entirely supersedes the State in the execution of the said contract.

ARTICLE IV

The installations and equipment placed by the State at the disposal of the assignee comprise:

1. The land and buildings of the National Powder Mill of Toulouse as shown on the chart attached to this statement. This property is bounded by the Garonne, the National Highway No. 20 and the boundaries shown in red. Included are buildings, railways, machinery, tools, materials and furniture present there at the date of publication of the signed Article 1, with the exception of those movable and immovable properties mentioned above, for which the assignee would have no use and which he would not desire to acquire;

2. The machinery, tools, materials and furniture which the assignee shall declare useful in his enterprise and all those articles which he shall designate among the saleable objects remaining in the different powder plants at the time the signed Article 1 is published.

ARTICLE V

The cession to the assignee of the property of the State designated in the preceding article shall be preceded by an examination, and an estimation of their value by experts proceeding as follows:

Upon the publication of the signed Article 1, the assignee shall delegate one or more properly accredited representatives to the Director of the Powder Mill of Toulouse and there shall be no exits from, or entrances to, the property at Toulouse defined in the second paragraph of Article 4, without a preliminary agreement between the Director of the establishment and the representative, or representatives of the assignee.

Three experts shall be immediately nominated, one by the Director of the Powder Mill of Toulouse, the

second by the assignee; and a third expert who shall be named by common accord, or lacking that, by the President of the Civil Tribunal of Toulouse to act as arbitrator between the two first named.

These three experts shall proceed, in the presence of representatives named by the Director of the Powder Mill and by the assignee, as well as by the Minister of Finance (Under Secretary for the liquidation of stock) without interruption and with the shortest delay possible to the following operations:

1. They shall make up an inventory of the real estate and immovable property with brief descriptions and provisory estimates.

2. They shall make up a preliminary inventory provisory estimate of all movables on the land, or in the immovables mentioned above.

In case of disagreement between the two experts, the third expert shall adopt the view of one or the other and the opinion of the third expert only shall be inscribed on the inventory sheet.

The Director of the Powder Mill and the assignee shall supply these experts with technicians, accountants, clerks or stenographers, as they are needed to accelerate the work of the experts.

As each article in the inventory is described, the representative of the assignee shall declare whether the latter considers it useful for the purposes of his enterprise and desires to acquire it; in the affirmative case the value of the article in question shall be written in a first column, in the negative case where the property is immovable the representative of the Minister of Finance (liquidation of stocks) shall declare whether his department wishes that any parts or certain materials shall be turned over to it after demolition for liquidation, or whether he prefers to abandon the property to the assignee; In keeping account of these declarations, the experts shall inscribe in the

first column the actual marketable value of the materials or of the products of demolition abandoned to the assignee, in a second column that of the materials applied to the liquidation of stocks and finally the third column showing the expense of demolition and of removal of the materials.

Regarding the easily movables, their value shall be written in the first column when they are claimed by the assignee as useful to his industry; in the conrary case the value shall be written in the second column and the cost of carrying them away in the third column.

Within 15 days after the appointment of the third expert the provisional inventory must be completed. Three copies are to be sent to each of the representatives of the Director of the Powder Mill, of the assignee, and of the Minister of Finance (Liquidation of Stocks).

Within three days from the date when the signed document is submitted to the Director of the Powder Mill, and at the invitation of the latter, the assignee must take over all the movables and immovables included in the inventory and from this moment he must be entirely responsible to the State; the articles to be turned over for liquidation shall be furnished on demand in the shortest possible time by direction of the assignee. The cars carrying these articles shall be delivered to the agents of the director of the Powder Mill at Toulouse, who shall give the assignee a receipt for articles thus delivered.

Within three months from the date of the preliminary inventory the experts shall make up a definitive inventory in which they shall modify the values set down in the preliminary inventory. These modifications may be made after consultation of any documents which they consider necessary (the Director of the Powder Mill must give them information, or fur-

nish such documents on demand). The definitive inventory shall state the charges imposed on the assignee for the use of the other parts of the establishment.

The values given in the inventory are the inherent or acquired values of such real estate, buildings, machinery, materials and tools which the assignee shall have declared useful in his business and which he desires to acquire. This inherent value, or value resulting from construction is subject, as the case may be, to a proportional deduction for charges imposed on the land or improvements either for depreciation through wear or deterioration, but without other amortization. In the case of all articles declared by the assignee to be not useful in his enterprise, the values shall be the actual marketable value of the articles or of the products of demolition loaded on a car in the plant. Both for the definitive and preliminary valuations, in all cases where the two first experts disagree, the third expert shall judge between them, taking the opinion of the one or of the other, and the value approved by him shall appear in the inventories.

The expense of the work of these experts shall be subject to the tax of the Président of the Civil Tribunal of Toulouse and entirely supported by the assignees.

In the case of equipment, materials and furniture in the other Powder Mills, declared to be useful by the assignee, there shall be made up a special inventory, article by article, under the superintendence of the Director of the Powder Mill of Toulouse, by agreements to this effect with the Directors of the other establishments. The value to be written in for each article appearing in the general list of equipment shall be the value given it in this list. For all other articles, their value in use shall be decided between the

representatives of the assignee and of the Director of the Powder Mill of Toulouse and definitely fixed by the Under Secretary of State, for the liquidation of stocks.

The objects included in this inventory shall be furnished to the assignee on demand in a car from the original establishment, the expenses of transportation being charged to the assignee.

ARTICLE VI.

From the moment when the definitive inventory shall have been completed, the Director of Powder shall notify the assignee the precise amount represented by the property, movable and immovable, which is ceded to him by the State. This sum shall be obtained by deducting from the total value written in the first column of the definitive inventory, the amount of the expense of demolition and loading on cars written in the third column and adding to this the amount of the special inventory of objects and materials furnished by other plants.

In the three months following this notification, the corporation formed by the assignee in execution of the provisions of the article, shall deliver to the State (Department of Public Property) mortgage bonds of a special series A, of a nominal value of 500 francs bearing interest at 5% from the date of the signed notification of the first paragraph of the present article for a total amount nominally equal to the value of the property, movable and immovable, ceded by the State to the assignee, who shall have been duly notified as mentioned in the preceding paragraph. In case the assignee fails to deliver these bonds in the period given, or to reimburse the State the sum specified in article three and, on expiration of this period, the State will be authorized to take immediate possession of the said property, movable and immova-

ble, without loss or damage and interest which it may reclaim from the assignee and the company.

The security for the bonds, series A, consists of a general mortgage on all the immovables of the company, but the interest of 5% levied on these bonds shall be due at each settlement date only in proportion to the amount of the net products of exploitation (defined and distributed as given in Article 8 below).

On delivery to the State (Department of Public Property) of the said obligations (Series A) the corporation shall definitely become owner of the total property carried on the inventory, except that property, the value of which shall have been written in the second column and for which the corporation shall remain responsible toward the State until the day of delivery to the Department of liquidation stocks mentioned above.

The State shall always have the right to dispose of its mortgage bonds, Series A, in any way that it pleases. The bonds thus transferred shall retain all the privileges and guarantees conferred on them in the above article, with the exception of the right of conversion into shares specified below. In the 15 days following their transfer, the State must notify the Corporation as to the numbers of the transferred bonds.

At all times the State shall have the right of conversion of the bonds, Series A, which have not been amortized or transferred, into capital stock. The shares put out for this purpose by the Society shall be delivered to the State in such number that their total amount shall be equal to the total nominal amount of the bonds exchanged for them. These bonds shall be delivered to the Corporation and immediately cancelled as amortized. If at the time there are shares in the Corporation which have different privileges and

different guarantees, the shares delivered to the State shall be split up among the various classes in the same proportion as the total outstanding shares.

ARTICLE 7.

In order to meet the charges imposed on the assignee by Article 3 of the present statement, the Corporation may put out bonds (Series B) amortizable in 50 years at the maximum, beginning with the fourth year inclusive following the issuance of the bond. These bonds are to be subject to the provisions of the present article and are callable at all times. The total amount of the interest and sum for amortization on these bonds must never exceed an annual disbursement of 8% of the sum which they have provided for the Corporation. If the net products of exploitation do not furnish a sufficient amount to meet the interest and the amortization of these obligations, the State shall pay the Corporation the necessary sum up to an annuity of 7,000,000 francs, beginning with the third fiscal year of the Society and up to the 53 fiscal year.

In the course of the first three years, the necessary sums to meet the interest and amortization charges of these bonds, (Series B) shall be deducted from the bonds as they are issued.

At all times the State shall have the right to purchase non-amortized bonds on conditions described when they are issued.

ARTICLE 8.

The distribution of the profits of exploitation for each fiscal year after the deduction of the cost of exploitation and general expenses, shall be made by deducting from these products in the order given below sufficient sums to satisfy the following obligations.

1. Interest of 5% on mortgage bonds (Series A) non-amortized.

2. Interest and amortization of the bonds (Series B) non-amortized.

3. Reimbursement of the State for any sums paid by it to meet the interest and amortization on bonds (Series B).

4. Amortizations voted by the stock holders.

5. Reserve funds.

6. Accumulative dividends of 7% on shares of the Corporation issued at the time of amortization of the Corporation.

7. Five percent of the remainder to the Administrative Council and the Management.

8. Ten percent of the remainder for amortization of the mortgage bonds (Series A).

9. Division of the surplus remaining between the stockholders on the one hand and the State on the other hand.

The stockholders may form a permanent reserve fund from their share in the surplus which could not be disbursed in any later year.

ARTICLE 9.

The company will be able, at any moment, to proceed to any increase of capital by the issuing of shares and bonds but only after preliminary agreement with the State.

(a) The shares issued according to the constitution will not have the right to the cumulative dividend of 7% and will be admitted to a share in the benefits only on the part reserved for the whole number of the shareholders according to number 9 of the enumeration of the distribution of the proceeds specified in the preceding article; no special privilege can be granted them on the shares issued at the time of the establishment of the company.

(b) In case of the creating of mortgages, the se-

curity reserved for these latter will take rank only after that reserved for bonds of Series A.

(c) There can be set aside for the bonds, outside of a fixed interest, no percentage in the benefits if this is not on the part reserved for the whole uumber of shareholders (according to No. 9 of the enumeration of the distribution of the proceeds of the preceding article).

ARTICLE 10.

In case of the liquidation of the company, the previous deductions on the assets disposable proceeding from the liquidation after the extinction of the liabilities (including the mortgages, Series A, not amortized) are made in the following order:—

(a) Sum necessary to reimburse the amount of the share paid off and not amortized.

(b) The surplus, with deduction of the reserves which will be the exclusive property of the shareholders and which will be divided among their only, shall be paid:—

50% to the whole group of shareholders
50% to the State.

ARTICLE 11.

The State will have in the company a representative on whom will devolve all the powers attributed to the commissioners of accounts, by articles 33 and 34 of the law of the 24th of July 1867 and who will be able, if he judges it wise to work separately from the commissioners named by the assembly of shareholders.

(End of the Regulations).

The conditions of the contract as we have just stated them apply to the hypothesis provided for by Article 4 *of the government's plan:* that where no grantee presents himself in answer to the call and to the advertisement provided for by Articles 2 and 3, it

would be necessary to have recourse to an administration by shareholders.

Let us suppress from this plan all that which has to do with the guarantee of the State and the participation in supplementary profits: We shall have a combination applicable to the case where one who asked for grant either an individual or a company would agree to act as substitute for the State, in the exploitation, rights and duties of the 1919 convention. To tell the truth, the contingency was not very probable. The expenses of organization are estimated at 120 millions; what company would want to take such a risk of losing capital, without guarantee of interest? The contingency was not, moreover, desirable; the State brought the benefit of the transfer, the real estate and the material at Toulouse, but it received in exchange only the mortgages of Series A.

Let us then consider the hypothesis provided for by the Article 4 of the bill. One may see the economy of conditions of the contract. It authorizes a combination of administration by parties interested at the foundation of the system, there is the construction by the grantee. There is also this principle, that the plant granted will make ammonia by the Haber process only.

The idea of the Administration is this: the agreement made with Badische obliges the State to pay the royalty provided for by Article 10 (2) upon all the production of the factory to the amount of 100 tons. It will not be possible then, it is believed, to divide the manufacturing half and half with Haber and Claude for instance, without having to pay to Badische the royalty on the 2 productions. It being granted that it would be necessary to turn over to the holders of the Claude process, important rights of license, the final result would be to superpose, on the payments made to Badische, the taxes due to the Claude firm.

Moreover, by Article 3, paragraph 2 of the agree-

ment of November 11, the contracting parties agreed to "share with each other reciprocally and without royalties the improvements made in the aforesaid processes, during all the duration of the contract. Therefore, the Administration worries if the State itself constructed some factories using the Claude process, would it not have to share with Badische the profits from this process, considered an improvement on the Haber process?

It is not hard to calm judicially the apprehensions of the Administration The royalty per kilo due to Badische would be due—we are sure from reading the text —only on what was made in the compression works, erected by the Badische engineers. Now, it is self-evident that it is not there, but in another part of the works, that there could be used the Claude process, the Casale or some other, which would require equipment quite different from the Badische process.

Besides, there might be a question (there are explicit opinions on this subject) of priority for the Haber process, and consequently to consider legally the Claude process as an improvement on the German process, the profits of which the French government or its grantees would have to allow the Badische to share Professor Matignon is explicit in this regard (1)

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(1) Conference of the Societe de Chimie Industrielle, Revue Scientifique, 18-25 Mai 1918.

It results from this exposition that the problem of the synthesis of ammonia beginning with its elements had been clearly foreseen before Haber, that several patents claimed already for the realisation of this synthesis, the use of pressure combined with the use of suitable metallic catalysts and that a goodly number of these catalysts, patented afterwards by the Societe Badoise, had been patented already.

The new documents which I bring here will allow a jurist familiar with patent legislation to form an exact opinion on the validity of the patents of the Societe Badoise patents; at this time, judging things exclusively from the scientific point of view, the value of most of these patents seems to me to be seriously compromised by former patents that a thorough search has enabled me to bring to light. It seems possible to annul the monopoly of the manufacture of synthetic ammonia that the Societe Badoise believed it possessed throughout the whole world. The bringing to light of previous patents may have the most important economic consequences, because of the large amounts of capital which

However this may be the plant prepared by the government excludes from the factory. At Toulouse all processes other than the Haber process, and by that very fact, gives a kind of official investiture, with the help of public capital, to the German process.

Articles 6, 7, 8, 9, 10 of the plan of grant provide for the financial combination of the exploitation:—

1. In exchange for the installations and the material put by the State at the disposition of the grantee company, there is paid to it, for an amount equal to the value of this material and its installations (about 18 million francs, expert valuation) mortgages of series A, bearing interest at 5% (Article 6) the payment of which is previously deducted in the first place on the amount of net proceeds of the exploitation (Article 8);

(2) The State guarantees to the amount of an annuity of 7 million francs, from the 3rd to the 53rd year, a loan to be floated by the company according to the conditions given in Article 7. As a counterpart of this guarantee, Article 8 provides first for the repayment of money advanced by the State as soon as profits will allow, before any dividend is distributed to the shareholders and for the division between the State and the shareholders of the profits in excess of the sums necessary to pay the interest and the liquidation of bonds and to distribute at 7% to the stockholders.

The total of the Class B bonds issued for loan would be eventually 70 millions.

This is an outline of the plan of administration

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will be involved at the moment of the introduction of this new industry into all the civilized lands.

It is important, as a practical conclusion, that government and private companies makers of synthetic ammonia, join in a powerful consortium, in order better to defend their interests, and, depending on the preceding patents which bring back into the characteristics public property of this reaction, do not allow themselves to impose afterwards royalties which are unjustified.

by shareholders proposed in article 4 of the project. By the terms of this article the plan must be first submitted to Parliament for approval. We must realize it, this plan does away with none of the objections raised before the Commission.

We have shown, first that the State, if it translated it into action would be subsidizing the German process. As for the works of 5 or 10 ton capacity like those of M. Claudes for instance, could they struggle against the colossal exploitation of the 100 ton factory, installed in the suitable country of Toulouse, having at its disposal material to begin with, State patronage, State orders, and associated with the State, in the current hypothesis by a contract in due form of shareholder management.

And then, what advantage would the State get from the convention of November 11, a national conquest?

(a) Or else, the State purely and simply gives up the profit. It receives in exchange for its property at Toulouse some series A mortgage bonds. These bonds may at any moment transform into stock,—at least those which, not amortized, have not been transferred. Thus it will participate, pro parte, in the profits. But it will have been able to make the transformation only if the prosperity of the company makes it hope for a sure advantage from this combination. Is the outcome so easy to predict in the case of private management?

(b) Or else—it is granted to a management of shareholders. Then it supports the plant at Toulouse, it guarantees 7 millions of interest on bonds B. It undertakes then certain obligations. Is it also sure of making a profit? When it shall have withdrawn the sums it has advanced; when the interest and amortization=Bonds B and when the 7% on the capital has been paid is there any assurance that there will re-

main, especially in the first years, a profit to divide between the State and the shareholders? Of this hypothetical profit, the State will only take one-half, the shareholders the other. How will the undertaking turn out for the State? And, in any event what will be the result for the commonwealth?

Finally, when the concession is once made the State will no longer have control of the affair no representative in the administrative council. An auditing committee, it is true (Art. II), but what can an auditing committee amount to? It audits the books and investigates the operations of the company; every six months the company puts at its disposal a brief statement of its conditions, active and passive. If it has reasons for anxiety it can sound the alarm and call the general Assembly. That is all, no power of action. The State, therefore, is absent from this industry, which should become an industry of the community.

And if a trust is formed what will become of prices?

Will they be restricted?

Would there be any means of checking the appetite of the shareholders?

It might come about that from this convention, one of the rare fruits of victory, the community would derive nothing.

Even worse, that a trust guaranteed, by the agreement itself from German competition would maintain prices at an unsatisfactory level.

Is this what the signatures of the agreement had in mind? And is it not our duty to seek for a financial arrangement which respects simultaneously the interests of French inventors those of the Treasury and those of the community?

Chapter 9.

The Financial Combination Suggested by the Commission

The disadvantages attending the plan of the Government was not overlooked by the more cautious spirits: since last March a certain number of our colleagues, Messrs. Loucheur, Ambroise Rendu and others had suggested a series of changes by which they hoped to overcome these obstacles.

They showed us (Amendment #5) how very regrettable it would be to adopt the procedure twice proposed by the Administration and to run the risk of losing precious time proceeding first to list the offers provided for in Article 3, then—after who knows what stage in the portfolios of the Commission?—to come again before the Parliament only to be met by Article 4.

In a word they demanded that the credits voted by the Chambers—30 millions for the first year—should be employed one-half for the installation of the Badische Process, one-half for the installation of the Claude process.

Acting on these suggestions your Commission has retained a part: the necessity of making up for the time lost in avoiding the double organization called for by Articles 3 and 4. The necessity also that the new company should not be confined to the exploitation of the Convention of 1919, and of being authorized if it seemed expedient, to make use of the process of those processes, French or otherwise, which might be as fruitful. The Commission has avoided the mentioning of such and such a process as the authors of the Amendment had done in order to avoid a premature publicity; it is not our place to take sides regarding the various current processes and so limit the initiative of the company which we are about to create.

After long discussions we were struck by a counter-project of Messrs. Vincent Auriol and Leon Blum on the one hand, and some suggestions of Mr. Isaac on the other hand.

Messrs. Auriol and Blum proposed the creation of an autonomous National Bureau, charged with the exploitation of the patent, more generally with the manufacture of the nitrogenous fertilizer and which would make use of a part of the powder mill of Toulouse for this purpose.

The function of the Bureau would be much like that of stock companies with certain differences: the rules would be fixed by Governmental authority; the Council of the Administration would be composed of thirteen members of whom three would be appointed by the State, four elected by the personnel of the Bureau, the six others chosen from the representatives of the agricultural, commercial and industrial interests. The powers of the Council would be very extensive, the State only holding the position of the Accounting Department in a stock company. The rights of the Administrative Council would be very generous: they would only be subject to general limitations made once for all in advance and without consideration of any ulterior circumstances by an ordinance of the Government. The methods chosen would naturally be entirely at the discretion of the Bureau. The selling price would be fixed by the Council, except for later changes by the Minister of Agriculture. Lastly, the controllers appointed by the Administration would not interfere except for the annual examination of the balance sheet. The financial aid of the State was however, requisitioned to furnish the Bureau not only with the patent and the installations, but also with running expenses: this aid would be increased in case of a deficit due to competition.

Below we give the text itself of the counter-project.

Article 1

The Minister of War is authorized to execute the agreement made on November 11, 1919 between the Minister of Industrial reconstruction and the Badische Anilin & Soda Fabrik—having in view the manufacture of synthetic ammonia.

Article 2

The expenses and profits of the agreement above referred to, as well as the license for the patents relative to the process which was the object of this agreement, are by the present law given over to the National Bureau, provided in Article 3. Likewise the part of the National Powder Mill at Toulouse which is capable of being used for this purpose, as well as the equipment which is not in use in making powder, is placed at the disposition of the said Bureau for the purpose of executing the said agreement.

Article 3

An autonomous National Bureau to be called the "National Nitrogen Bureau" is created by the present law. This Bureau is to manufacture nitrogenous fertilizer and especially to execute the provisions of the agreement mentioned in the preceding articles.

This Bureau will have a civil personnel, and be financially autonomous. It will be governed by an Administrative Council with full powers according to the methods in general use in corporations.

This Council will be composed of:

1.—Two representatives of Agricultural Associations from those regions principally interested in the production and consumption of nitrogenous fertlizer;

2.—Three representatives of Engineering Societies, chosen from nitrogen experts of which one will be elected by the engineers of the Bureau.

3.—Three delegates elected from the personnel of the Bureau.

4.—One representative elected by the Chambers of Commerce and a delegate from the Superior Council of Railways.

5.—Three delegates from the Government.

The period of office of the members of the Council will be two years. They may be reappointed or re-elected.

The Council will have all the executive powers generally accorded to the Board of Directors of corporations, especially the power of appointing and dismissing the executives; of deciding on recruiting methods, discipline, advancement and remuneration of the personnel within the limit of certain general rules fixed by the Public Administration and relative to the duration of the work, to the application of social laws, of hygienic conditions and of a pension system.

It would be able to float loans with the authorization and guarantee of the State, they would establish an accounting system which would provide for an annual balance sheet according to the current practice in the industrial and commercial circle. Each year after the inventory this balance would have a preliminary examination by three State comptrollers who would have all the power of Accounting Departments in corporations, and would be examined and ratified by the Parliament, which would be in session at the time the balance was filed.

The net profits of the National Bureau, that is to say, the profits after deduction of the necessary sums for the general expenses, sociological expenses, interest on capital loaned by the State, interest and annuities for the amortization of loans, funds for reserve and depreciation, will be distributed as follows:

One-third to the Treasurer; one-third to be distributed according to a percentage determined by de-

cree, part to the directing personnel and to the Administrative Council and part to the operating personnel for any individual, collective or sociological work which it may decide upon.

One-third to the Syndicate or group of purchasers in the form of annual loans, proportional to the purchases made by them during the previous year.

The selling price of the products will be fixed on advice of the Administrative Council by decree of the Minister of Agriculture.

Article 4

An ordinance of the Government made up by the interested Ministries within one month from the date of the promulgation of the present law will define the status of the office and the rules for the nomination and election of members of the Administrative Council as is done by general assemblies for the corporation. The functions of the Council and of the controlling Committees and, if there are any, those decisions which may not be made without Ministerial approval, all in the execution of which the Minister must obtain the sanction of Parliament will be there defined. The Administrative Council is to be named within the fortnight following the publication of the ordinance.

Article 5.

A credit of 30 millions is opened in a budget scheduled for the office as a fund for organization.

It will be placed at the disposition of the Administrative Council as soon as the latter is formed.

The interest and amortization annuities from this sum will be noted on the balance sheet of the Bureau as owing to the State and will be regularly turned over to the Treasurer at the date of the first inventory.

Article 6.

The Bureau will be empowered by Act of Parliament to conduct business in such places as are suitable and in accordance with the principles set forth above, and to exploit all other processes for synthetic ammonia by agreement with the inventors or owners of the patents, and also carry on all other similar industries, (super-phosphates, potashes, etc.)

* * * * *

The Auriol-Blum conception might be classed with State Ownership.

State Ownership by definition has for its end the State control of all social means of production, but if there is any criticism to be made of our colleagues' plan, it is that it creates an organization which entirely escapes Governmental authority. The operation had been in their opinion, almost entirely subject to the control of the laborers; it had escaped entirely from the control of Parliament; as for the State, it was only recognized on pay-day as a paying teller without authority.

We wished on the contrary, to form a National organization, in which the State might, through wisely chosen delegates, play an eminent role with very few modifications the plan proposed by Messrs. Auriol and Blum might serve as the foundation for the edifice which should be created. It was framed in an ingenious idea: that of a corporation in a form very much like that of the law of 1867, where the Administrative Council was formed from various interested groups in place of being elected by an assembly of stockholders.

Mr. Isaac on his side, proposed a counter-project using this formula: a corporation supported by the State, which would make full use of all the prerogatives appertaining to it in consequence of this support and

would retain at every instant, full control of the organization thus created.

The Finance Commission having considered the Auriol-Blum Amendment, instructed a sub-committee to make up a text combining this Amendment with that of Mr. Isaac, and with ideas which came to light in the course of the long discussions held before it.

To reassure those who are skeptical regarding dangerous innovations—let us recall that the sub-committee comprised men of all parties: Messrs. Isaac, Blum, Auriol, Queuille, Boissard, de Tinguy du Pouet and the author of this report—members of the Finance Commission. We have requested that Messrs. Loucheur and Ambroise Rendu be added to our Committee.

It would be absurd to affirm that a sub-committee thus composed could be impregnated with a Revolutionary spirit.

We have been reproached, however, with bowing to the tendencies of the believers in State ownership.

It will be easy to acquit us of such a crime just as of that of having dared to introduce into our Council of Administration representatives of the labor syndicates, and to prove the corporation to be the most flexible, the most popular in the literal sense of the word, the most faithful to the interest of the collectivity of any organization possible.

The Committee's Plan—Name, Form, Object of the Corporation.

In the first place, we gave up the word Bureau which calls to mind the idea of Bureaucratic concentration, but not of an active force. Neither have we retained the adjective "National" which would seem to exclude from the effective management of the enterprise that which was only due to private initiative.

The corporation will be a stock company created for 99 years on the model of the law of 1867.

Its object? Execution of the agreement of November 11, 1919, a work in which it is subsidized by the State in its obligations and rights. *But also for the manufacture of all nitrogenous fertilizers and products, or of substances directly connected with their manufacture.* A more widely extended horizon consequently, than the corporation planned by the Government which limited itself to the exploitation of the Haber Process.

The corporation will first make use of the powder mill at Toulouse. Rent is to be paid to the State, 500,000 francs annually, as also a share in the profits, which will be ten percent of the surplus according to Article X of our plan.

Capitalization

The corporation would have a capital of 50,000,000 represented by 500,000 shares of 100 francs each: in order to insure the financial support of the largest number of capitalists, even the most modest, it seemed wise to fix a low par value.

Distribution

200,000 preferred shares (cumulative) as shown below:

(a) 50,000 by the syndicates, cooperatives and agricultural associations of France.

(b) 50,000 of which:

20,000 by the Chambers of Commerce

30,000 by the Syndicates of the Manufacturers of Chemical Products.

(c) 50,000 by public subscription

No subscription in this category may exceed 100 shares per subscriber.

(d) 50,000 by the Syndicates of working men, cooperatives and other labor associations.

300,000 to the State—

of which 50,000 represents the payment of 5,000,000 mentioned in article X of the agreement and taken on that condition.

And 250,000 subscribed by the State itself.

It is evident from this table, that it is the State in our corporation which becomes the principal supporter and the principal subscriber.

It furnishes:—

1. All the installation of the powder mill at Toulouse:
2. The 5,000,000 of article X of the agreement.

It subscribes to:—

1. 250,000 shares, that is to say, 25,000,000;
2. Finally all those shares which are not taken up by the groups, A, B, C, D, or, in case they fail to absorb them, by public subscription.

As for the public itself, what a role might it not assume in such a corporation.

The general public the man in the street, will take the shares in class C and besides all which are not subscribed to in classes A, B, and D.

The agricultural interests who have most at stake, their syndicates, cooperatives and associations will subscribe to the 50,000 shares of class A.

The syndicates of manufacturing chemists will, for their part, subscribe to 50,000 shares of class B.

Finally, the labor syndicates, cooperatives and other labor organizations will take 50,000 shares of class D.

It scarcely seems possible to realize more perfectly the proportional representation of interests: The

public, the agricultural interests, labor, and the State: certainly a new idea, or at least very nearly new, (we will show that it has precedents) but it is inspiring, both as an equitable, economic plan and as a step in the evolution toward a better understanding, and a fairer industrial system.

Let us dwell a little on the priority given to the 200,000 shares of the first group. Not only do they bear 6% cumulative interest; but as we shall see in article X, these interests are to be taken care of before the 6% on the shares of the second group, that is of the common shares. Let us not say "the State shares" for the State may carry not only common stock, but also preferred stock in case it takes up the right to subscription not entirely used by some class of the first group.

Administrative Council—Let us suppose the capital subscribed and a quarter of the capital paid in. A general assembly is called, thanks to the promoters, that is to say, the Ministers designated in the law and particularly the Minister of Agriculture, who is responsible for the execution of the terms of our Article XIII.

Normally this assembly should name its first executives and committees. The law of 1867 expressly stipulates (Article XXV) that these executives may be designated by statute. In this case, if we are to read the text of the law closely they could be named for three years only: We have decided—and it is Parliament that makes the law—that in this case the provisions of Article XXV will undergo some stretching: In the interest of greater stability of organization the executives will be named for six years (to be replaced at different periods and to be eligible for re-election).

By whom and how are these executives to be named?

First our project stipulates twenty in number.

Fourteen (14) to be appointed by the Ministers of Agriculture, Finance and War as follows:

3 Representatives of Agricultural Associations.
2 Experts on Nitrogen Fixation
1 Representing the Chambers of Commerce
1 Delegate from the Superior Council of Railways
1 Representing the Minister of Finance
1 Representing the Minister of Agriculture
2 Representing the Minister of War
2 Delegates from the personnel of the Corporation
1 Delegate from the Engineers and Chemists of the Corporation.

—
14

Six named by the holders of preferred stock as follows:

1 Member nominated by class A
1 Member nominated by class B
1 Member nominated by class C
1 Member nominated by class D
2 Members nominated by classes A, B, C and D together.

—
6

The Minister of Finance who has charge of executing the statute (article 6 of the bill) since it is appropriate to the functions of his office, will combine the decrees, countersigned by his colleagues, the Ministers of Agriculture and of War, naming the fourteen (14) executives of the first group. The choice of the Ministers will not be arbitrary: They may only choose executives whose names are on the lists prepared for them by the groups, or organizations interested. These

lists must always contain three times as many names as there are candidates to be named from that class.

As for the President of the Administrative Council, he will be selected from among the twenty executives by the Ministers interested.

In the terms of Article XXVI of the law of 1867, the executives of a corporation must own a certain number of shares determined by statute. The executives from the second group would have to conform to the provisions of the statute; as for those of the first group, the State will delegate that each one will carry his share for himself to the General Assemblies. This is the significance of the phrase in Article III "These fourteen (14) members who are delegated by the State to carry their shares."

General Assemblies and Powers of Administrative Council.

The General Assemblies will be enabled, according to the statutes prepared by the Minister of Finance, to apply all the modifications which are not contrary to the dispositions of the present law, and this shows that our project does not place the means of production of the Company in subjection to the State. Consider next the Administrative Council: It comprises, all in all, four active members, namely:

The representative of the Minister of Finance.

The representative of the Minister of Agriculture.

The two representatives of the Minister of War.

Of the sixteen other members, six are named by the priority shareholders, then entirely freed, if they wish it, of all immediate administrative ties, ten are the representatives of groups, either committees or associations, who choose them in all freedom, in all independence of mind. The Minister cannot choose them outside the lists established by the shareholders.

And who is directly responsible for the management of the Company? The Minister? No: the administrators (Article XXXIV of the law of 1867)—the responsible administrators, not only of the infringements of the law, but for all mistakes of management. Can one say that this is a State-Ownership idea? And is not our Company obedient to all the impartial rules of corporations, identically the opposite of an organization obedient to the authority of the State? It is the Council of Administration and it alone, who names the Director and the Administrators. It is the body which names and discharges if it chooses; the chosen Administrator. It is the body which organizes the recruiting, the discipline and the pay of the personnel. It is this body which fixes the selling prices, contrary to the advice of those who would like to see the market controlled at the will of the Ministers. Is there any thing here but a protection carried out by pecuniary aid and not by meddling of the State, however feeble in the affairs and the technicalities of the Company.

Members of the Commission.

Two are named by the Minister of Finance, and among those above all, an expert accountant; the third, by the General Assembly. Here it is a question only of observers whose powers are defined by the Articles XXXII and XXXIII of the law of 1867; whether they are named by the Government or not, they are total strangers to the management of affairs of which they only control the situation and the accounts to be given to the Assemblies—

Their accounts, before being submitted to the annual general assembly, are presented to the interested Ministers. If the Ministers accept them, there are no difficulties. If they reject them it is incumbent

upon the Administrative Council to take measures to put them in order—the responsibility of each of the Administrators is engaged, remember—

Obligations.

The Company can issue obligations to the amount of 70,000,000 francs, with the guarantee of the State. No issue beyond this figure without the authority of Parliament.

With the capital stock of 50,000,000 it is, in all, an initial asset of 120,000,000, without counting the installation of the powder plant of Toulouse valued at 15 to 20,000,000 for the disposal of which the company will be responsible.

The technical men estimate that this asset will be *necessary* and *sufficient* to attain the production of 100 tons of nitrogen per day which the governmental program has assigned to it. They think also that, with this capital, they will not be able to exceed this quantity of production; the point is to call this fact to their attention in answer to these apprehensions which have manifested themselves and of which we will speak later.

Profits.

The starting point of the Commission's plan has been, as we have repeated several times, the consideration that the convention of November 11, 1919, was an acquisition from the preliminary negotiations of the treaty of Versailles, and that consequently the profits which may be derived from it should enter the national patrimony. To leave to one private firm the profit of an operation which, in a few years, will become very profitable, would be to frustrate the collection of a certain revenue to which it has a right.

For these reasons we have formed the corpora-

tion whose characteristics we have just discussed and whose capital is derived from two sources:

A.—Twenty million Preferred Shares, subscribed by groups, syndicates, associations, cooperatives.

B. Thirty Million Common Shares assigned to the State or subscribed by it.

To establish the *net profits,* a balance will be struck between the *gross receipts,* on the one hand, and on the other hand, a quantity including the general expenses and Common stock charges, the interest and amortization of the obligations and the amortizations which the Council shall judge useful.

The *net profits* shall then be divided according to this plan:

1. One-*twentieth* to the formation of a reserve fund imposed by Article XXXVI of the law of 1867.

2. 6% interest to the A preferred shares (20 million), it being intended that this interest will be *cumulative,* that is to say, that the interest which cannot be paid wholly for one or several years shall be made up on the following:

The State will come next with its B Common shares, which will receive 6% interest.

The residue—may we call it, if you please, superprofits—will be divided in the following order, after there shall have been deducted a new levy of one-tenth for a special reserve for the purpose of guarding against all emergencies:

10% to the Treasury, which, added to the 500,000 forfeiture provided by Article III of our project, represents the rental paid by the corporation to the State;

3% to the stockholders—all stockholders whether of preferred or common stock;

5% to the Administrative Council;

15% to works of foresight, of solidarity, of hygiene, of housing, etc., as designed by the personnel;

40% to be carried over to the next year's account, which will serve to lower so much the more the price of the products.

100%

It may be noted in the first place that the *reserves will not possibly under any pretext, be used to accomplish the dispositions made in Article 8* (increase of the capital).

As to the 40% to be carried over, it represents a bonus to the consumers, thus interested in the exploitation. We had thought of distributing it in the form of a cancellation. The mortgage, under this form, would have been difficult, nearly impossible to negotiate. It is just as valuable to recompense the consumer for his purchases, passed on to his future purchases; he is thus party to the fortune of the corporation and he is permitted to cast his weight on the side of the market, the low water mark of which he knows will be lowered mathematically by each one of his purchases.

Here again the project carries out an interesting innovation: in place of making the fortune of individual stock owners, as would be the case with a private corporation, each consumer works for the common good. He is interested in the profits of the corporation and becomes the artisan, at the same time of his own prosperity and of the general welfare.

If the corporation which we create is well managed and nothing allows us to doubt that it will be, with the collaboration of the highly competent persons of which the Administrative Council is composed—it should realize considerable profits. We have given above by way of indication, the balance

sheet for 1921, of the Badische Anilin which was for it a very poor year. Evidently the conditions of exploitation would be different with us: the price of installation, of raw materials, of labor, etc., will be higher with us than with our German contemporaries. Nevertheless, and on condition of taking precaution to make corrections relative to these modifying factors one can get a fairly exact idea of the possible profits of the future corporation. Its exploitation would contribute, we may hope, to increasing by considerable proportions the productive patrimony of our country.

The Field of Exploitation of the Corporation—When the papers had announced that the Financial Commission was beginning the study of the bill drawn up by the Government, and thereupon it was asked that the Chambers approve the agreement made with the "Badische Anilin und Soda Fabrik," there was among certain members a concert of imprecations.

"Well! they cried, we have French inventors, French processes, yea, even inventions and processes of allied countries. And is it with Germany that we are going to treat in order to introduce at home her method of manufacture, prepared by her engineers and workmen and designated as such in the sight of all the world!"

To tell the truth, the benefits of the agreement were soon realized and were they not just these two: 1st, to learn the tricks of the Badische's method of manufacture of which we are ignorant; 2nd, to rid ourselves of the German competition which would submerge us, for it would fix the price otherwise than favorable to us.

The apprehensions then localize.

One begins by fearing that by granting an official patronage to a corporation installed at the powder works of Toulouse; a corporation able to exploit only the Haber process in the terms of the law which the

Government proposes to vote upon; and according to the charges, Parliament would create a veritable state industry by which all the other industries of Nitrogen production would be suffocated. The State, with the money of taxable firms would perpetrate on these taxable firms a murderous competition.

These fears are manifest particularly in two letters which it is interesting to reproduce, of which one has been addressed to us by M. Claude; the other by the manufacturers of Cyanamide.

PROTEST BY M. GEORGES CLAUDE.

January 19, 1922.

I recall, in the first place, our pressing need of knowing if the State wishes to make of the Haber process a State industry or to favor the exploiters of this process under any form whatever.

As long as this menace weighs on us, we shall not be able to start off on a large scale, anxious as we are to do so: the present doubling of our experimental installation at Montereau by a five ton industrial unit being merely a beginning which is entirely insufficient.

I hope, besides, that it might be considered that any official measure which would be for the Haber process a mark of superiority, unjustified according to us from every point of view, would ruin our efforts in France and throughout the world.

The least that we can claim is equality of treatment: something for Haber and something for us. If it is desired to subsidize the German process, an equal subsidy for the French process.

The solution which I would prefer would be:

A Haber plant at Toulouse, Claude plants at the coke ovens, each at the risk and peril of the exploiter for the comparison would show better than anything else the advantages of the French process from the point of view of the rapidity of installation of the

plants, of their simplicity, of their cost, of their operation, of the cheapness of the ammonia.

However, if it is decided to make a state installation at the powder plant at Toulouse and to spend there the number of millions which would be necessary for one hundred tons a day, it would be easy, as we will see, to adapt our process there so that it would benefit from the advantage of the existing central stations without being limited to an expensive material for the gas motors.

In a normal Claude installation for water gas, it is necessary to obtain in the gases, the highest content of Carbon Monoxide according to the reaction

$$C+H_2)=CO+H_2$$

since there is just enough of it and even, according to the Schloesing Commission, not quite enough to produce the necessary power. In the case of Toulouse, on the contrary, (power being available), it is necessary to obtain the most hydrogen possible and the least Carbon Monoxide by means of the reactions

$$C+2H_2O=CO_2+H4$$

and

$$CO+H_2O=CO_2+H_2$$

which furnish, per kilo of coke, twice as much hydrogen.

It is certainly easy to obtain a gas running 60% hydrogen, 20% CO, 18% of CO_2, and 2% of nitrogen at the rate of 2.5 cubic meters of this gas per kilo of coke from which it would be possible to obtain 1.3 cubic meters of hydrogen, in place of 0.9 cubic meters in our normal practice.

Instead of producing one volume of carbon monoxide equal to that of the useful hydrogen, there would be produced only two-fifths of that amount. The use of a rather small quantity of a product which is

at once an excellent combustible and a veritable chemical product would always be possible, if it was not desired to use it in gas engines which would no longer have this time to furnish more than a small part of the energy of the cycle.

In these conditions, and with reference to the conclusions which the Schloesing Commission must have established for the case of our proces at Toulouse:

1st. The installation of gas producers to furnish the necessary hydrogen is reduced in the ratio of 1.8 to 0.9 and even from (1.3 plus 20%) to 0.9 since the Schloesing Commission admits a supplement of 20% for insufficiency of power. The reduction of this installation comes, therefore, to 40%.

2nd. The gas engine plant which, in the conclusions of Schloesing Commission, counts very heavily in the installation cost and in the price per kilo of nitrogen in our process, is annulled and should be replaced by the cost of the corresponding electric motor;

3rd. Such a cycle would reduce greatly the energy expended in the manufacture of the hydrogen by liquefaction. Indeed, the gaseous volumes to be treated in consequence of the increased hydrogen content are reduced in the ratio 60 to 50 and are to be compressed to a lower pressure because of the greater proportion of hydrogen effecting the expansion.

In total, the reduction of energy is more than 25%.

Utilizing these data in the application of our process at Toulouse, one may be convinced that even the pride of the coke oven gases, the Claude process thus modified would furnish a solution more rational, more economical, and more in conformity with French interests.

PROTEST OF THE CYANAMIDE MANUFACTURERS.

Paris, November 30, 1922.

We have just learned, from the communications in the press, that your Commission has undertaken the study of a bill relative to the manufacture of synthetic ammonia.

We know under what a great obligation your Commission has been in considering new sacrifices of the State in order to facilitate what it considers an industry absolutely essential to agriculture as well as to the national defense.

Representing ourselves as one of the branches of the synthetic nitrogen industry, it would hardly become us to appear to be actuated by selfish sentiments in essaying to oppose the measures on which the Commission has resolved doubtless only in the presence of considerations of a very high order.

It seems to us, however, to be true according to the public documents that the attention of the Commission cannot have been called to the importance of the results already obtained in one of the methods of manufacturing synthetic nitrogen which was developed in Germany in the same degree as the Haber process and which in France is at present the object of the efforts of the industrial groups to which we ourselves belong.

Certainly, the manufacture of Cyanamide, which is the case in point, has had some difficulty in starting in our country, and although it has existed here since 1907, it is only in these later years, that it has been able to diminish by certain artifices in manufacture, the inconveniences which the farmers experienced at first in its use.

The present results are beyond question, and the product put at the disposal of agriculture in the form of Granulated Cyanamide gives satisfaction.

Cyanamide, lime nitrogen, rivals Ammonium Sulphate. German agriculture consumes more than 250,000 tons of it per year. Besides, new methods permit the industrial transformation of Cyanamide into Urea under favorable conditions and thus to bring nitrogen to the soil in a form which it has not yet been possible to realize practically by the other processes.

In the presence of these results, the undersigned firms are devoted to developing their manufacture.

Their present factories, erected during the course of the war, were not all exploited during the hostilities; one of them, however, the factory at Bellegarde, is equipped for 24,000 tons and the Société des produits azotés, to which this plant belongs has delivered 32,000 tons to the Minister of War in a single year.

The Compagnie d'electricite industrielle has made at Marignac (Haute-Garonne) installations of considerable magnitude and it is in a position to produce 30,000 tons.

1. The Fradet Plants at Brignaud (Isere) which have been operating for one year are also equipped for a production of 30,000 tons.

Finally, without speaking of other installations constructed by the State during the war and not used at the present time, the Commission has, perhaps, lost view of the fact that a special law has assigned the completion of the factories at Lannemezan to the Société des produits azotés, which after having been almost paralyzed by the consequence of the economic prices has marshalled all its resources to put these plants in condition by the beginning of 1923.

It is therefore our duty, Mr. President, to bring to your attention the fact that the undersigned manufacturers believe they can assure the State of the production, on French territory, beginning with 1923, of a quantity of Cyanamide or equivalent nitrogen fertilizer (urea-phosphate nitrogen) reaching easily the

amount of 100,000 tons per year. The magnitude of their manufacture being limited only by difficulties of a financial order against which they are struggling courageously (the building up of stocks, etc.), they beseech you, Mr. President, to be so kind as to have examined, by the Commission, the state of their industry.

Knowing the competence and the sense of justice which animates the Financial Commission, its preoccupation with avoiding expenses and immobilizations of capital without immediate necessity, they are persuaded that the Commission would be glad to take into consideration the following statements:

1st. The fixation of nitrogen as cyanide, which uses white oil, is a method which has been tested. It has given rise on the part of the State to the creation of important factories which should before all else be brought to completion.

The State, besides, has reserved to itself a participation amounting to 40% in the profits from the exploitation of one of these factories. It collects large taxes from another and finally has subsidized the third;

2nd. A considerable production of Ammonia is realized at the present hour in French factories by the use of Cyanamide. Other Ammonia plants, by other processes, are in erection by private industry.

3rd. There exists, particularly in the Pyrenees, a quantity of available hydroelectric power which can be rapidly applied to the development of the Cyanamide industry, using plants already erected;

4th. The manufacturers of Cyanamide are ready to give all the guarantees that agriculture can desire in regard to the price of the products of its manufacture.

They have never been guilty of abuses in the past, having on the contrary made great sacrifices for the

creation of their industry and are ready to confer with the Government for the fixing of the price of nitrogen in the relation to the price of coke, of labor and of the kilowatt.

We hope, Mr. President, that the Commission will be so kind as to proceed to the inquiry which we are asking of them and for which we naturally place ourselves at its disposition fully and completely.

In this expectation, we beg you to receive, Mr. President, the assurance of our highest consideration.

Compagnie d'electricité industrielle:
President of the Administrative Council.
Signed: illegible

Société des produits azotés
President of the Administrative Council.
Signed: illegible

Société des usines Fredet:
The Deputy Manager
Signed: illegible.

Société des axotés: 2 Rue Blanche, Paris.
Compagnie d'electricité industrielle: 41, Boulevard Haussmann, Paris.
Société des usines Fredet: 25, Rue de la Pepiniere, Paris.

Article II of our project is of a nature to reassure all the manufacturers of nitrogen products, without exception.

We do not wish to establish a state industry in favor of the Haber process.

We do not wish to grant to German manufacture a patent of a superiority which would ruin French trade.

We do not wish to tie our hands for the present or for the future by tying ourselves to a single method of manufacture.

We wish, on the contrary, to be able eventually by the parallel progress of *all* the industries producing

nitrogen, to which the councils of the Corporation will decide to have recourse, to bring about the larger manufacture of nitrogen fertilizers, to stimulate competition, to lower the price.

To this end it was necessary to commit our Corporation to exploit, at Toulouse or elsewhere, all the processes of manufacture of nitrogen products or similar products for which it may be able to acquire the patents; processes for the direct synthesis of nitric acid, processes for the direct synthesis of ammonia, processes for the transformation of products into ammonia by the action of water or of steam. The Corporation will be able, at the same time or later, at Toulouse or thoughout France, to embrace all the methods of manufacture; Article II stipulates it expressly, adding that the manufacturers will have no kind of monopoly other than that which is conferred on them by the patents exploited.

Thus are dissipated the apprehension of those who were disquieted by seeing the State prepare, by purchasing and leasing the Haber patents, to recognize a monopoly in a process of manufacture from German industry, this industry which counselled and supported the war of 1914.

Is it necessary to limit the production of the Corporation?—Tinguy's amendment.

Our colleague M. de Tinguy has proposed to the Commission the following amendment:

"To complete as follows Article II:

"On the other hand, in the case where the total production realized as well by the exploitation by the Badische process as by the exploitation of other processes, should attain an annual total exceeding at one time, 36,000 tons of nitrogen and the one-third of the annual French consumption, as established by the official statistics, a legislative authorization must take place to authorize this increase in production."

Your Commission has not thought it necessary to retain this amendment.

M. de Tinguy's thought was this:

"We have wished to leave free play to competition. The text which is submitted to us gives a beginning towards satisfaction, but insufficient."

Are the fears of M. de Tinguy justified?

In our plan the capital of the Corporation is 120,000,000. According to the advice of engineers, this capital will hardly be sufficient to assure the production of 36,000 tons. It is well understood that the reserves will not be invested in new factories. If it is desired to increase the capital, the plan specifies that it will be necessary to come again before Parliament: and Parliament will be free to take exception to the increase. In fact, therefore, M. de Tinguy has satisfaction. One does not make, one cannot make, more than 36,000 tons of nitrogen in the factories of the Corporation.

But when has one seen it necesary to limit the field of an infant industry? The amendment proposed would lead to one certain result: and increased cost for fertilizer. This is absolutely contrary to what we want. Practically—and during a temporary period—it is possible that we may have at one moment three sources of production: Chile nitrate at six or seven francs, nitrate from the Powder Works at Toulouse at three francs, from other plants at four francs. Farmers never would understand these differences in price: there would inevitably take place an equalization.

Finally, M. de Tinguy has another reason for being reassured. Factories such as those of M. Claude are already operating. During the two years at least of the management of the exploitation at Toulouse, they will operate without competition, with consider-

able capital. How can they not utilize in the future the advantage both of being the first to arrive and of advancing with increased speed?

Conclusion.

Such is the financial arrangement which we submit to the vote of Parliament.

We propose to approve the Convention of November 11, 1919, passed with the "Badische Anilin," because we deem it useful for the French interest to utilize a Process which has made in part Germany's fortune and allowed Germany to resist for four years the pressure of the blockade.

But we consider that it would be at once unjust, anti-French, and uneconomical to sacrifice the future of our inventors to the popularization of an enemy process of manufacture. So, let us leave to the exploitation which we are planning perfect freedom to put into operation, at whatever place it deems useful, whatever process it regards as fruitful.

The principal seat of the company will be at the gunpowder plant at Toulouse; its business office shall be wherever the Minister of Finance, author of the future decrees, and then the stockholders shall decide.

The Company's form will be that of a Sociétés Anonymes (Joint Stock Co.) of the type provided by the law of 1867, with the modifications defined by our bill.

The administrative council will be the creation simultaneously of the State and of groups or of individual stockholders. The profits instead of going to a privileged, private firm, shall go to the categories of enumerated subscribers, public, association, groups, etc., at the same time as to the Treasury: in short, to the community.

Through the organization of the administrative council itself, we are certain that the Government will preserve a right to look into prices so as to adapt them to the needs of agriculture.

It is sufficient to have read attentively, the analysis which we have made of the project in the preceding chapter, to become convinced that we did not attempt anything which resembles a State owned enterprise. But, while remaining hostile to any system consisting in placing of the social means of production under the dependence of the State, cannot one escape, when superior interests demand it, antiquated rules and extreme ideas of a selfish individualism?

If we fear that one day the immense agricultural interests may be sacrificed to the appetite of a Trust, should we not take precautionary measures? And if we have discovered among the fruits fallen from Victory, something which may be interpreted as a National profit, have we not the right to give to the community rather than to the capitalists, who we are not sure will always place the common interest above the opportunity for dividends?

A dangerous experiment, certain people say. Not an experiment: we have precedents. And if it is necessary to take examples, we would name (a) L'Office cherifien des Phosphates du maroc", la Societe pour l'amenagement du Rhone and more to the point, la Societe nationale pour l'exploitation des potasses d'Alsace. (b) L'Office cherifien des Phosphate" represents a State Administration with an administrative council comprising, besides the Government representatives, representatives of agriculture, of industry and of commerce.

The expenses of exploration and installations are covered:

First: By a donation from the budget of the Protectorate Loan.

Second: By a special reserve fund drawn from the profits;

Third: By bonds issued by the Bureau with the Government guarantee.

The exploitation receipts are covered:

First: By the receipts of the Bureau.

Second: By levying on the reserve fund.

The Bureau carries out its own Administration and its own financial operation according to rule fixed by the Vizier's decree.

On the profits there are levied:

1. A part for the Staff and Executive personnel, based on the useful production and the profits realized:

2. A part applicable to the reserve fund.

The Bureau can, with the authorization of the Government, take part in Moraccan enterprises having for their object the utilization of phosphates in the territory of the protectorate.

As for the Societes pour l'amenagement du Rhone, organized by the law of May 27, (Official Journal, May 28, 1921), the capital stock is to be covered by communities or interested public establishments, local industries, or individuals. The bonds are to be obligations whose interest and amortization are guaranteed by the State, under certain conditions.

The excess profits (surplus after subtracting interest and the annual amortization of the bonds and the stock dividends) are distributed in the proportion of 20% to the capital stock and 80% to the reimbursement, without interest, of the sums which the State has expended in guaranteeing the interest on the bonds, whatever that may be.

After total reimbursement of the guaranty debt,

the excess profits shall be divided in half between the State and the concessionary firms.

The statutes, by the terms of the law, are to fix the composition of the Administrative Council of the single firm or firms which shall have been appointed to the concessionaires after authorization, and in particular are to fix, the method of representation of the State, that of the communities or of interested public establishments, the methods of financial cooperation of these latter, etc.

The representatives of the State, of Departments, and of Communes should comprise together at least two-thirds of the members of the Administrative Council, and those of the State alone two-fifths. The President of the Administrative Council shall be designated by the State from among its representatives.

The Departments, the Communes, and all other communities or public establishments, authorized for this purpose by deliverative decree of the Council of State, may be admitted, either grouped or individually, as concessionaires, or as participants in the firms established, by virtue of the acts of concession.

The public service corporations or the companies consuming electricity or water power can be admitted to participation in one or more of the companies.

The representation of each in the Adminstrative Councils and the conditions of its participation in the expenses and profits of the firms shall be determined by the statutes of these firms.

All of the work shall be subject to the decrees made in the Council of State declaring these works to be of public utility.

The definite projects will be approved by the Minister of Public Works in collaboration with the Minister of Agriculture.

Finally the Societe nationale pour l'exploitation

des potasses d'Alsace is conceived on the following plan which will be submitted tomorrow to the vote of the Chamber.

The property, rights and interests in the concession and exploitation of the potash mines located on the Haut-Rhin, will be rented for a period of 75 years to a single corporation found in accordance with the French laws covering the subject.

The initial capital of the firm shall be subscribed in the form stock by the groups enumerated below:

(a)—Agricultural groups to the extent of 50%.
(b)—Chemical industries to the extent of 10%.
(c)—Casualties to the extent of 5%
(d)—Communities of Alsace Lorraine to the extent of 15%
(e)—Carries of "Kuses" to the extent of 15%
(f)—Personnel of the Potash mines to the extent of 5%.

It is not necessary to compare at length these texts with ours to perceive that they include intimately all the principles which we have emphasized in our Bill: collaboration of the State and of the interested parties to form the capital; participation of the Communities in the composition of the Administrative Council; designation of Administrators by each Community; choice by the State, from among the Administrators of the President of the Administrative Council; division of the profits according to assignments between the State and the lists of share holders; official control of the operations of the firm, etc. Is anyone indignant in certain spheres to see adopted formulas breaking away from the belated conservatism of some, with the narrow subjectivism of others? In the firms considered,—as much owned by the State as

ours, if there is ownership by the State,—has there not been noted room for all initiative, for all good will, either industrial or financial, for any professional collaboration?

It is necessary to evolve with one's century. State Socialism has not given results which can tempt us—and yet this is not the place to discuss them. But if it sees enterprises strongly concentrated encompass with their tentacles the public property, mines, etc., water-falls, is not the State under obligations to interfere and protect the individual against the menacing Trust? It is no longer then a question of State Socialism, nor of Social Socialism; it is on the contrary, a case of reinstating in groups of individuals all their force and all their independence; of preventing them from being frustrated by coalition or monopoly. As to the apprehensions which some have manifested at seeing introduced into the Administrative Council, representatives of the workmen's unions, will they not pause awkwardly on the modern conception which is to encourage syndicalism, the well-ordered working man's association, and the cordial collaboration of capital and labor? What can the two delegates of the personnel which we introduce among the twenty members of the Adminstrative Council be suspected of? That they become conversant with the affairs of the firm? But the accounts are public; the report of the commissioners is to be submitted to the Ministers and I imagine that these will not be hidden from Parliament! That they will come to the meetings of the Council with a spirit of opposition and disorganization? Why not have confidence in the working man's conscience and decree it inferior to the patronal good will? In any case, it is only a question of two members among twenty and there is a chance at least within reason that they will go with the ma-

jority. Once more, considered without bias by men who do not fear innovations, when they are judged good, the financial arrangement which we propose gives the maximum satisfaction to those who were disquited by a convention such as that of November 11, 1919:

1.—It does not preserve the monopoly of the German patent. It leaves on the same plain manufacture by the Haber process and all the methods of manufacture, French or otherwise, to which it would be expedient to have recourse;

2.—It leaves to the community the profits from a convention which was passed in its name and for it;

3.—It protects the public against a coalition which would ruin the market.

A last word. When the Bill shall be voted, when the exploitation of the new firm shall be started, let us not think that the past is finished.

It will be necessary for everyone who is interested in the *necessary* development of our agriculture to carry on a stubborn propaganda for the use of fertilizer in general, of fertilizer made in France in particular. So far as the nitrogen fertilizers are concerned to the slow peasant, it will suffice to employ the fertilizer as nearly as possible. In any case it is possible in order to conciliate everyone, to make nitrite rather than ammonium sulfate. But in this period of monetary crisis, we no longer ask from abroad what can be found even in the air of the Country.

With these observations your commission proposes for your vote the following text, which seems to it to conform most closely to the desires expressed before it.

THE BILL.

ARTICLE 1.

The Ministers of War, of Finance and of Agriculture are authorized to execute the agreement passed on November 11, 1919 between the Minister of Industrial Reconstruction and the "Badische Anilin und Soda Fabrik" for the purpose of manufacturing Synthetic Ammonia.

ARTICLE 2.

For the purpose of executing the said agreement, there will be created under the guidance of the Minister of Finance during the six-month period following the promulgation of the present law, a corporation will function according to the provisions hereinafter made, in conformance with the rulings already in force by the law of July 24, 1867, August 1, 1893, July 9, 1902, November 16, 1903, November 22, 1913.

ARTICLE 3.

The duration of company will be 99 years from the day of its formation. Its object will be exclusively to manufacture fertilizer and nitrogenous products or the compounds directly connected therewith. The company will take in charge all obligations of the rights resulting from the agreement of November 11, 1919, for the execution of which it is responsible to the French State in the terms of Article 14 of the said convention. It will take for the duration of its exploitation in place of the State that part of the National Powder Works at Toulouse which is capable of being utilized for the execution of the agreement of November 11, 1919 and which will be defined in the statutes as well as the equipment which is there and the delivery of which the company will demand.

In payment for this site and without regard to the share in profits hereinafter specified, there will be paid to the State by the company an annual rental of 500,000 francs.

ARTICLE 4.

The company will have a capital of 50 million francs represented by 500,000 shares at a nominal value of 100 francs which will be distributed as follows:

1.—200,000 preferred shares with cumulative interest which will be subscribed:

(a)—For 50,000 by the syndicates, co-operatives and Farmer's Associations of France;

(b)—For 20,000 by the Chambers of Commerce, and for 30,000 by the syndicates of chemical manufacturers;

(c)—For 50,000 by public subscription;

(d)—For 50,000 by Workmen's syndicates, co-operatives, and other workmen's associations.

For Class C reserved for the public, no one subscription can exceed 100 shares for one subscriber.

In case the shares reserved for one class of subscribers are not all subscribed for by those who have the right, the shares thus left will be distributable either for subscription by the State or by the public, without opposing to the subscribers the expressed limitation of the preceding paragraph.

2.—300,000 ordinary shares of which 250,000 shall be assigned to it in representation of the aforemenbe asigned to it in representation of the aforementioned payment in the first paragraph of Article 10 of the agreement of November 11, 1919, payments which shall be made to its account.

ARTICLE 5.

The concern shall be managed by an administrative Council of 20 members, which will be obliged to be composed as follows:

Three representatives from the Agricultural Associations who will be proposed under the conditions fixed by an order of the Minister of Agriculture.

Two specialists on the question of Nitrogen fixation who will be proposed: one by the consulting committee of arts and manufactures, the other by the Civil Engineers' Society of France;

One representative of the Chamber of Commerce

One delegate of the Superior Council of the Railroads

One representative of the Minister of Finance

One representative of the Minister of Agriculture

Two representatives of the Minister of War

Two delegates from the personnel of the Company

One delegate from the engineers and chemists of the company.

These fourteen members, who shall be by delegation, from the State Carriers of these shares, shall be named by a decree countersigned by the Ministers of Agriculture, of Finance and of War, who shall appoint them upon sight of lists presented by the groups or administrations concerned, those lists including triple the number of names, representatives or delegates to which they are entitled.

Six other members of the administrative council shall be named by the preferred stockholders and accordingly:

(a)—One member appointed by each of the classes of preferred stockholders;

(b)—Two members by all the shareholders together.

The President of the Administrative Council shall be appointed by a decree countersigned by the three Ministers concerned. The members shall be appointed for a duration of six years renewable by half and re-eligible.

ARTICLE 6.

The statutes of the company fixed by the Minister of Finance in view of the Constitution of the company may be modified by the general assembly of stockholders in everything which is not contrary to the legislative texts in force for the joint stock companies.

The powers of the Administrative Council will be those which are provided by the laws of July 24, 1867, July 9, 1902, November 16, 1903, November 22, 1913.

It will name and be able to dismiss the director and the directing personnel, it will designate and be able to discharge the deputy administrator, determine the rules of recruiting, of discipline, advancement and remuneration of the personnel within the limits of certain rules fixed by a ruling of the public administration and relative to the duration of work and to the application of the social laws in force, to conditions of hygiene, to regulations of pensions.

The business year will commence January 1, and December 31.

ARTICLE 7.

The accounts of the company will be controlled by three commissioners two of whom named by the Minister of Finance (and among these one will be

chosen from a list of three presented by the Association of expert accountants) and the third by the general meeting of stockholders.

The accounts and the report of the commissioners to the general meeting of stockholders will be submitted to them each year only after being presented for the approval of the interested ministers. They will be considered as approved by the latter if they have not been rejected by them conjointly at the end of a month after presentation.

ARTICLE 8.

Each increase or reduction of capital, each decision relative to the dissolution or to the prolongation of the company will not be accomplished without the consent of Parliament.

ARTICLE 9.

The company will be able upon the decision of the administrative council to issue bonds up to 70 million francs at the rate of interest and on conditions approved by the Minister of Finance—These bonds carry the guarantee of the State. Any issue exceeding the figure of 70 millions cannot be decided upon without the authorization of the Parliament.

ARTICLE 10.

The net profits of the company are found after taking out of the gross receipts the general expenses all company charges of interest and liquidation of obligations and all liquidations which the council judges useful. They will be assigned as follows:

5% to the legal reserve conforming to the law.

6% as interest on preferred stock. (This interest being cumulative, that is to say, that the interest which will not have been paid entirely

during one or more years, will be carried forward on the following years;

6% interest to common stock.

The surplus after setting aside 10% for a special reserve will be divided as follows:

10% to the Treasurer for supplementing wages as provided in Article 3—

30% to stockholders

5% to adminstrative council and 15% to group and social work as designated by the personnel.

40% employed to lower by so much more the normal selling price in the year which followed.

ARTICLE 11.

The company will be able to manage or utilize, at the works of Toulouse or in such place as the administrative council judges suitable in conformance with the dispositions of the present law, all other methods for production of nitrogenous products or similar products of which it will be able to acquire the patents.

ARTICLE 12.

All suits against the company and the State will be within the province of the administrative courts. All disputes with a third party will be within the province of the Civil courts.

ARTICLE 13.

The Minister of Agriculture is especially charged with watching the execution of the present law. It will appertain to him along with the other Ministerial Departments to cause the execution of the measures which are incumbent on these latter in the shortest possible time.

The necessary credits will be demanded by the Minister of Agriculture and inscribed on his budget.

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DEFENDANT'S EXHIBIT No. 239.

Statement of Col. J. W. Joyes, Ordnance Department, United States Army, at Hearing Before the Committee on Military Affairs, House of Representatives on H. R. 10329-S. 3390.

This statement is intended briefly to present some of the information obtained and opinions formed by me during an official visit to Europe in the summer of 1919, especially bearing upon the plant development and costs of production of the cyanamid process and of the Haber synthetic ammonia process.

This visit to Europe was made as chairman and member of the United States fixed nitrogen commission appointed by the United States fixed nitrogen administrator with the approval of the Secretary of War, to ascertain the state of the art of nitrogen fixation in Europe and especially in the occupied German territory. The commission spent about two months abroad visiting several cyanamid and ammonia oxidizing plants in France and Germany and the noted Haber plant of the Badische Co. at Oppau for the synthetic manufacture of ammonia. The large arc plant in Norway was also visited and many well-informed persons were interviewed.

In the need for nitrogen for the war Germany was pressed hardest, because all importation of Chile

saltpeter was stopped by the blockade, and munitions could not be made without a substitute material from which nitric acid could be produced.

The German Government nitrogen administrator required the gas works and coke works to deliver all possible by-product ammonia, but no great increase could thus be made.

The Government further increased ammonia production by requiring increases of existing cyanamid plants and construction of new ones, the Government assisting by large loans, etc., and even building out of public funds two large cyanamid plants.

The Haber synthetic ammonia plant which the Badische Co. had started to build at Oppau in 1912 had brought into successful operation just before the war its first installment, some 7,000 tons per year. Later this plant was increased to 100,000 tons per year; and another plant for 200,000 tons per year was built at Merseberg, some three-quarters of its capacity having been developed when the armistice was signed.

Germany has a total present nitrogen capacity of about 300,000 tons by the Haber process, 120,000 by the cyanamid process, and 150,000 by coke ovens and gas works.

France undertook the establishment of plants to produce by fixation at home nitrogen substitutes for Chile nitrate sufficient in amount for all her home munitions manufacture.

The process selected as the backbone of this program was the cyanamid process and the plans contemplated adding to the prewar capacity (which was about 8,000 tons of nitrogen per annum), an aggregate annual production of over 50,000 tons of contained nitrogen, giving in all some 60,000 tons of nitrogen—to be available a small part before 1918, part in 1918, and all by May, 1919.

This program was largely financed by public funds, two of the nine plants being Government-owned, three being Government-controlled, and the others having probably some assistance in their financing.

Where possible these plants (or at least the carbide department) used water power, but from necessity some used steam power.

To utilize the ammonia produced by the cyanamid processes, six large oxidizing plants were started for producing nitric acid—the last to be completed early in 1919. A large part of these were Government-owned.

Great Britain was gravely concerned over the insecurity of her nitrogen supplies and early appointed a committee of prominent business men and eminent scientists to investigate and advise.

In its final report in May, 1919, the committee—after a complete analysis of all comparative data as to costs, yields, etc., and recognition of the scarcity of water powers in Britain, recommended: "As a minimum provision for safeguarding the future and for meeting a portion of the growing home demand for various nitrogen products" the establishment in Great Britain without delay, "either by private enterprise (supported if necessary by the Government) or as a public work," of the calcium cyanamid process upon a scale of 60,000 tons per annum (which would mean about 12,000 tons) of nitrogen fixed.

Italy had before the war capacity for some 7,000 tons of nitrogen by the cyanamid process. The present capacity is probably about 20,000 tons nitrogen.

In Switzerland, Norway, Sweden, and other neutral countries increase during the war period was a mere matter of business enterprise.

Cyanamid-production capacity in these countries was increased by about 6,000 tons nitrogen in Norway

and Sweden (with much more planned) and a small increase, not definitely known, in Switzerland.

Japan fully doubled her capacity and the United States planned for about 80,000 tons nitrogen and completed one plant for 40,000 tons—the Muscle Shoals plant, now under discussion.

Norway, having cheap water power, doubled her arc-process plants.

Throughout the world, therefore, the period of the war has seen large increases in the capacity for fixing nitrogen in useful forms. This has been most marked in Germany, where the necessity was vital, and next among the Allies, where the motive was mainly the national security.

In Germany and in France the need was so great that some of the plants were placed where conditions were so unfavorable that it was never expected that they could live after the war, but as far as possible they were placed and built with a view to future use in production for the needs of agriculture and the arts.

Deducting for plants so unfavorably placed as to be of use only during the war, and for plants under construction but not completed at the close of hostilities, I have formed, upon information from many sources, the following opinion as to present capacity (exclusive of coke ovens) probably available for commercial production:

	Metric tons of nitrogen	
Germany:		
Haber	300,000	
Cyanamid	93,000	
		393,000
France:		
Cyanamid	40,000	
Arc	1,000	
		41,000

Italy:		
Cyanamid	12,000	
Arc	1,000	
		13,000
Scandinavia:		
Cyanamid	28,000	
Arc	30,000	
		58,000
Austria, cyanamid		22,000
Switzerland, cyanamid		7,500
Japan, cyanamid		12,000
Canada, cyanamid		12,000
United States (N. P. No. 2), cyanamid		40,000

Aggregate about 600,000 tons, of which some 270,000 tons is by cyanamid process and some 300,000 tons by Haber process.

The arc process has been used on a large scale only in Scandinavia where water-power development and operative expense were very low. There are no reasons to expect early radical changes in its technique or economics, although these may come in time.

The cyanamid process has been growing in many countries for 15 years or so, and the apparatus and procedure have been so long studied that they are well stabilized and revolutionary changes are not probable.

It is the one fixation process existing which, because it is not prohibitive in its power demands and is fully developed, was indicated as most advisable for prompt, reliable production at assured moderate cost. With reasonable power cost it fixes nitrogen in the cheapest usable form for agriculture—lime-nitrogen—and with cheap water power can compete in ammonia cost with the Haber process.

The Haber process is a new proces, and large scale use brought many troubles, which under the war pressure the large and efficient staff of the B. A. S.

F. succeeded in overcoming, so that the process is now a continuously operating and fairly efficient plant to which the German company has linked up many auxiliary processes for adapting its ammonia to fertilizer uses. But our inspection indicated to us that up to the close of operation of the Oppau plant there had been constant modification and improvement of apparatus. Only a single ammonia converter at Oppau had all the latest improvements that we saw. It seemed clear to us that the Oppau plant showed need of still further improvement for entirely satisfactory operation.

At a good many points quite careful regulation of pressures, quantities, temperatures and compositon of the gas mixture, and a great number of gauges, meters, indicators, thermometers, etc., were provided to show the need for control by manipulation of a correspondingly large number of valves, switches, and the like.

It is said that fewer operatives are required than would be indicated by these controls, but making every allowance therefor, our commission was convinced that the labor and supervision forces must be quite large. In the estimates which have come from a number of sources the expense of this item was not exorbitant, because of the very low salaries and wages paid in Germany up to 1914, and it is upon such low rates, now no longer existent even in Germany, that the production of ammonia at quite low figures had been asserted.

Repairs and upkeep must be expensive.

It has been said that ammonia was made in this plant when it first started operation (1914-15) for about 4 cents per pound, exclusive of interest and with a small item of depreciation only, but it must be remembered that at that time lignite for fuel was available at about $2 per ton and coke at about $4; that common labor received about 75 cents to $1 per

day, and skilled labor between $1.40 and $1.50. These conditions have gone, and are not expected to return.

It was our firm conviction that under present conditions the production cost must be fully two and a half times as much.

If we assume this same plant set down in perfect condition in a favorable location in the United States, the costs of production under present price conditions would be, in my opinion, based upon our careful studies, as follows:

	Cost of Ammonia	
	Per short ton.	*Per pound.*
Plant cost of production, including cost of upkeep	$209-$163	$0.105-$0.082
Amortization, depreciation and obsolescence	75- 50	.038- .025
Interest at 6 per cent on $750	45- 45	.022- .022
Sales expense	2- 1	....
Aggregate cost	331- 259	.165- .129

The larger figures for production assume some excess of personnel over what the Germans probably require, because of need for the personnel to learn a process new to them and very complex in its essence The lower figures represent what might be attained after some years of familiarity with the process.

In course of time; that is, in some years of operation, it would be expected that American ideas would develop recording gauges, automatic controls, and other cost-reducing devices.

The first cost of the hypothetical plant is assumed as $750 per ton per year, which is much more than is stated for the German work done before, or early in, the war, but is not much more than recent work in Germany must be estimated. It is not too high for present American prices, considering the special na-

ture of the equipment. It affects the upkeep item of production cost, the amortization, and the interest.

Upkeep is taken at 10 per cent of the cost of the plant for repair, materials, parts, etc., and for replacements. Upkeep labor is included in the general labor item above. Considering the exacting conditions of the process and the newness of the process, this is not too much.

Amortization is taken at 10 per cent of cost of plant on the assumption that in 10 years there will be large obsolescence loss due to improvement in this new process.

The interest rate is assumed at 6 per cent on the assumed $750 cost of plant. This is probably too low.

We were told in Germany, by a German official of a firm using ammonia, that he did not believe Oppau could produce ammonia after the war for a total cost of less than 10 cents.

We have no basis for absolute comparison in the United States, since the Government's plant, experimentally built to use a similar but only partly developed process, promptly developed troubles and the close of the war coming just at that time prevented the expenditure of the money necessary to overcome those troubles and make the plant operate. If the war had continued that would undoubtedly have been done, and the plant would have been made to make ammonia. But the experience showed conclusively that there would have had to be much development at much expense before the new American process could have equaled or nearly equaled the German or Haber process, which had had already eight years or so of intensive study in commercial, if small-scale, apparatus, and several years of large-scale operation.

There is nothing to indicate that the Haber or

similar process in its present state of development can, under present business conditions in America, produce ammonia for as low a price as 10 cents per pound, exclusive of interest.

As I have already stated the matter of nitrogen supply was, during the war, energetically fostered by the German Government and specific control over all matters in that connection was exercised by an imperial commissioner or commissary for nitrogen control under the war department, who was given authority to issue regulations for the production and use of nitrogen products and for all traffic therein. In several publications the establishment of this control is mentioned in terms of high praise, and Walter Rathenau, in general charge of raw materials supplies, was given great praise for having initiated it.

In order to know the conditions affecting production by the several groups there were associated with this Government administrator, Prof. Caro as representative of the cyanamid producers; Dr. Bueb, representing the Badische Anilin and Soda Works; and Geheimrath Bruckner, representing the by-product coke ovens. That was a strictly war control organization, but even before the war closed, Germany, with her usual foresight, was giving consideration to the future commercial aspects of her nitrogen works, and in August, 1919, there was definitely formed an association of the producers which was called the Stickstoff Syndakat G. m. b. H. or nitrogen syndicate.

This designation is a commercial one and the organization is along commercial lines, but it is reliably stated that the establishment of this syndicate was largely due to governmental influence. This will be more easily understood if it be realized that the German Government had given financial assistance to many of the new plants and plant increases which the

war had necessitated, and that it had also built, out of public funds, two of the largest cyanamid plants in Germany.

The capital stock of this syndicate is held by the Badische Co., which makes synthetic ammonia; by the group of industrial companies and capitalists who manufacture cyanamid; and by the German Ammonia Sales Co. and the affiliated organizations of the coke works and gas works. Each of these three groups has one member on the board of directors, and the fourth member of that board is named by the Government. There will also be a board of managers of the company, the chairman of which will be named by the Government. Membership on this board, which will handle most of the business of the syndicate, is divided between the Government and the Badische Co., the by-product coke and coal industries, and the lime-nitrogen, or cyanamid industry.

The management of this syndicate will from time to time determine the limits within which the several groups may produce nitrogenous compounds, having made a preliminary allotment of production to the Badische Co. of 300,000 tons; the lime-nitrogen, or cyanamid industry 93,000 tons; the by-product industry 120,000 tons; and have, as a fundamental basis, decreed that prices of any of these products shall be on the basis of nitrogen content as affected by a factor which is for lime-nitrogen 8; for ammonia sulphate 9; and for saltpeter 10. That is, a given amount of nitrogen in those forms would be valued for sale purposes in the ratio of 8, 9, and 10. All output is to be pooled, the sale of any one product depending upon its individual merits and popularity; but all plants manufacturing the same product will receive the same price. Exportation to be allowed only after all domestic demands have been met.

In order to safeguard other interests than those

of the producer and to insure economy in distribution, there has at the instigation of the Government finance ministry been organized a joint body consisting of representatives of producers and consumers known as the nitrogen commission. That commission will consist of 22 members; the nitrogen syndicate just mentioned, the Government, and representatives of the agriculturalists of Germany will have 5 members each, and fertilizer manufacturers, fertilizer dealers, the bureau of industry, and the bureau of agriculture, and three of the associate States will have 1 member each.

This information, which comes from most reliable sources and is not to be disputed, shows that beyond question anyone outside of Germany producing or desiring to purchase nitrogenous fertilizers or similar compounds will have to deal with a single organization, essentially a branch of the German Government, which will have an absolute monopolistic control of all such products produced in Germany or whatever surplus there may be for export.

In France the Government found itself in somewhat similar position as to actual governmental investment in fixation plants, although on a much smaller scale. During the war the Government became interested financially in nearly all of the expansion of nitrogen fixation, and it owned completely two of the cyanamid plants.

At the time of the commission's visit to France, the subject of utilization of the large cyanamid-producing capacity created during the war, and especially of that part of it which was owned by the Government, was being discussed in the Chamber of Deputies and in the press. The urgent need for more use than previously of nitrogenous fertilizers by French agriculturalists on the one hand and on the other hand the advisability of some measures to assure the con-

tinued operation of the war-created manufacturing facilities were being urged by men of such prominence as M. Pottevin, M. Roux, and M. Tisserand. There seemed to be very strong public opinion in favor of some arrangements which would insure the operation of the cyanamid plants. At the time of our visit no decision appeared to have been arrived at as to a definite plan of operation, but it appeared very probable that there would be some action by the Government, perhaps not as systematic and comprehensive as the German arrangement above described, but nevertheless one that would provide some basis of organization of the industry to meet the commercial outlook, possible German competition, etc.

Our commission saw installations in French Government plants for making ammonium sulphate out of cyanamid, and at one there was a very large scale installation of apparatus then (July, 1919) in process of erection for this same purpose. The French Government is, therefore, unquestionably in the market to some extent as a producer of ammonium sulphate.

Directly after the war the French Government had made temporary provision for the marketing of cyanamid as such by the appointment of an administrator.

The situation in Italy is not known, but rumors reached the commission that the Italian Government was to some extent interested in the cyanamid producing capacity with which that country emerged from the war period.

England, as intimated above, gave much attention to the nitrogen problem by way of study, but did not actually take any positive steps of consequence. England has been a producer of ammonium sulphate of which she exported a large quantity, while on the other hand there was some importation of other forms of combined nitrogen aside from Chile nitrate. There

was a strong recommendation from the nitrogen products committee, made at the close of the war, that the Government actually build a fair-sized cyanamid plant in England or Scotland, but it has not been learned that any definite steps had been taken toward the carrying out of that recommendation.

It is well known that although the Chile nitrate workings are operated by private capital, the Government of Chile levies an export tax upon every ton of nitrate which leaves the country and that this tax is the predominating source of the Chilean Government's revenues. The Chilean producers are associated in quite a strong organization, which has the sympathetic and more or less active backing of the Government.

J. W. JOYES,
Colonel, Ordnance Department,
United States Army.

DEFENDANT'S EXHIBITS Nos. 240 to 245, INCLUSIVE.

PATENTS PRODUCED BY DR. CHARLES L. PARSONS.
(For Copies of Patents See Patent Exhibit Book.)

Exhibit No.	*Patent No.*	*Date*
240	1,141,947	June 8, 1915.
241	1,141,948	June 8, 1915.
242	1,151,537	Aug. 24, 1915
243	1,159,364	Nov. 9, 1915.
244	1,159,365	Nov. 9, 1915.
245	1,143,363	June 15, 1915.

DEFENDANT'S EXHIBIT No. 246.

STATEMENT FROM BOOKS AND RECORDS OF ABBOTT LABORATORIES.

CINCHOPHAN.

Factory and Laboratory Cost of research work.

Work Order or Serial No.	*Yield Lbs. Oz.*	*Material*	*Direct Labor*	*Dept. Cost*	*Factory Adm. Expense*	*Total Mfg. Cost*	*Amount Charged to Research and Expense*
A 714	133.14	4,505.51	868.83	3,921.30	1,572.23	10,867.93	
A 928	282.11	3,264.59	223.83	1,010.15	406.43	4,905.00	
A 934	911.15	4,921.86	493.35	2,226.49	827.62	8,469.32	
Laboratory work						2,660.00	
	1328.8	12,691.96	1,586.07	7,157.94	2,806.28		26,902.25
Additional Expense for packaging, selling and shipping, including royalties paid							3,152.97
							30,055.22
Net amount realized from sales of 1328 pounds 8 oz.,							14,601.92
Net cost of research and experiments,							15,453.30

The first factory work order No. A 714 was issued July 1917.
The last factory work order No. A 934 was completed in March 1920.

DEFENDANT'S EXHIBIT No. 247.

STATEMENT FROM BOOKS AND RECORDS OF ABBOTT LABORATORIES.

NEOCINCHOPHAN.

Work Order No.	*Yield lb. oz.*	*Material*	*Direct Labor*	*Dept. Expense*	*Adm.*	*Total.*	
3438	263 - 6½	$3,180.62	684.34	2,566.34	819.34	7,250.64	
4886	464 - 3	2,970.43	307.64	1,153.56	365.30	4,796.93	
Laboratory work						437.50	
Total	727 - 9½	6,151.05	991.98	3,719.90	1,184.64		$12,485.07
Additional expenses of packaging, selling and shipping, including royalties paid,							1,752.16
							$14,237.23
Approximate net amount that will be realized from sale of 727 lbs. 9½oz.							$ 7,324.75
Net cost of research and experiments							6,912.48

The first factory work order for neocinchophan No. 3438 was completed September, 1922. The second No. 4886 was completed April, 1923.
Factory experimental work on this product is still proceeding.

Defendant's Exhibit No. 247

3239

DEFENDANT'S EXHIBIT No. 248.

STATEMENT FROM BOOKS AND RECORDS OF ABBOTT LABORATORIES.

PROCAINE.

Factory and Laboratory Costs of Research Work.

Work Order Serial No.	*Yield Lbs.*	*Oz.*	*Material*	*Direct Labor*	*Dept. Expense*	*Genl. Adm. Expense*	*Total*
A 806-831	149.	6	12,281.18	1,973.86	8,908.03	3,633.01	26,796.08
A 874	238.	10	10,379.81	1,402.92	6,331.38	2,244.96	20,359.07
Laboratory work,							1,520.00
Total,	388.		22,660.99	3,376.78	15,239.41	5,877.97	48,675.15

Additional expense of packaging, selling and shipping including royalties paid	5,708.71
	54,383.86
Net amount realized from sales of 388 pounds.	24,081.09
Net cost of research and experiments,	30,302.77

The first factory work order A 806 was issued March 11, 1918.
The last factory work order A 874 was completed in March, 1920.

DEFENDANT'S EXHIBIT No. 249.

STATEMENT FROM BOOKS AND RECORDS OF ABBOTT LABORATORIES.

ACRIFLAVINE AND PROFLAVINE.

Work No.	*Order Yield lbs. oz.*	*Material*	*Direct. Labor*	*Dept. Expense.*	*Adm.*	*Total.*	
575		73.78	439.32	1,194.93	408.56	2,116.59	
743		128.23	94.80	232.07	59.82	514.92	
845	14 - 9	100.64	427.99	1,343.22	442.80	2,214.65	
1116		25.33				25.33	
1759	23	642.25	70.59	172.80	60.85	946.49	
3924			686.73	2,575.24	815.49	4,077.46	
Laboratory work						4,197.50	
	37 - 9	970.23	1,719.42	5,420.26	1,787.52		$14,094.94

Additional expense of packaging, selling and shipping, including royalties paid, 539.53

$14,634.47

Net amount realized from sale of 37 lbs., 9 oz., 2,495.91

Net cost of research and experiments, $12,138.56

The first factory work order No. 575 was issued July 24, 1920, it was completed September 30, 1920. Work order No. 3924 was completed January 30th, 1923.

Defendant's Exhibit No. 249

DEFENDANT'S EXHIBITS Nos. 250 to 261, INCLUSIVE.

PATENTS PRODUCED BY ELMER K. BOLTON.
(For Copies of Patents See Patent Exhibit Book.)

Exhibit No.	*Patent No.*	*Date*
250	724,789	Apr. 7, 1903.
251	1,063,173	May 27, 1913.
252	1,104,943	July 28, 1914.
253	739,145	Sept. 15, 1903.
254	876,810	Jan. 14, 1908.
255	856,811	June 11, 1907.
256	919,572	Apr. 27, 1909.
257	956,348	Apr. 26, 1910.
258	966,092	Aug. 2, 1910.
259	1,004,433	Sept. 26, 1911.
260	828,778	Aug. 14, 1906.
261	845,129	Feb. 26, 1907.

DEFENDANT'S EXHIBIT No. 262.

LICENSES ISSUED TO E. I. DUPONT DE NEMOURS & CO. BY THE CHEMICAL FOUNDATION, INC.

License	*Patents*	*Products*
41	770,177 778,476 807,422	Pontachrome Black 6BX Pontachrome Blue Black R
replaced by		
331	807,422 expired Dec. 12, 1922	same products
162	1,055,701	Ponsol Paper Blue
replaced by		
333	1,150,863	Ponsol Paper Blue

Licenses	*Patents*	*Products*
163	787,859	Ponsol Violet R
	818,336	
	906,367	
replaced by		
329	787,859**	Ponsol Violet R
	906,367	
164	818,336	Ponsol Violet RR
	906,367	
	1,003,268	
replaced by	787,859**	Ponsol Violet RR
330	906,367	
	1,003,268	
(165	787,859**	Ponsol Dark Blue BR
(	818,992***	
(166	787,859**	Ponsol Green B and Blacks
	796,393	
	818,992***	
	876,679	
replaced by	787,859**	Ponsol Dark Blue BR
328	796,393*	
Expired	818,992***	Green B and Black
381	1,149,231	Pontacyl Fast Light Yellow 2G and 3G
382	970,878	Ponsol Blue 3G
387	1,014,539	Lithosol Bordeaux B
388	961,047	
	1,008,906	Ponsol Red Violet 2RN
389	856,811	Ponsol Golden Oranges
	876,810	
398	865,587	Lithosol Vermilion G
399	903,284	Orange or Brown Stilbene Dye

* Expired Aug. 1, 1922
** " Apr. 18, 1922
*** " Apr. 24, 1923

Licenses	*Patents*	*Products*
400	961,612	Ponsol Claret
401	1,054,888	Ponsol Blue Green B
402	961,048	Ponsol Violet RN
403	1,011,068	Ponsol Red BN
404	1,133,081	Ponsol Pink B
(167	739,145	Ponsol Yellow G
(	1,063,173	
(	1,104,943	
(		
(168	739,145	Ponsol Blue G
(	753,659	
(	844,914	
(	1,063,173	
(	1,104,943	
replaced by		
327	1,063,173	Ponsol Yellow G and Blue G
177	1,232,551	Tungstic Lake (Heliopont Colors)
	1,232,552	
	Application 438,449	
249	892,455	Sulphogene Yellow GG
314	956,348	Hydron Blue R
332	1,034,853	DuPont Napthanil AS
	1,042,356	DuPont Napthanil BS
	1,099,108	
	1,101,111	
	1,121,026	
	1,122,564	
	1,127,027	
	1,169,267	
	1,193,566	
	1,206,232	
334	818,980***	Sulphogene Bordeaux G, B and 5B
Expired		

*** Expired 4-24-23

Licenses	*Patents*	*Products*
363	904,809	Sulphogene Ochre G
364	966,092	Hydron Blue G
365	1,165,531	Sulphogene Brown R
366	1,243,171	Sulphanthrene Pink FF
368	1,243,170	Hydron, Orange, Bordeaux, Violet, Brown, Crimson.

DEFENDANT'S EXHIBITS Nos. 263 to 277, INCLUSIVE.

U. S. PATENTS PRODUCED BY ERNEST H. KLIPSTEIN.
(For copies of patents see Patent Exhibit Book.)

Exhibit No.	*Patent No.*	*Date*
263	1,336,759	April 13, 1920.
264	1,237,405	Aug. 21, 1917.
265	1,191,480	July 18, 1916.
266	1,216,612	Feb. 20, 1917.
267	1,278,229	Sept. 10, 1918.
268	1,232,620	July 10, 1917.
269	1,254,364	Jan. 22, 1918.
270	1,133,108	Mar. 23, 1915.
271	1,289,280	Dec. 31, 1918.
272	1,281,494	Oct. 15, 1918.
273	1,107,107	Aug. 11, 1914.
274	1,203,069	Oct. 31, 1916.
275	1,089,797	Mar. 10, 1914.
276	1,421,722	July 4, 1922.
277	1,414,045	April 25, 1922.

DEFENDANT'S EXHIBIT No. 278.

U. S. PATENT No. 919,572, DATED APRIL 27, 1909.
(For copy of patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 279.

U. S. PATENT No. 956,348, DATED APRIL 26, 1910.
(For copy of patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBIT No. 280.

U. S. PATENT No. 966,092, DATED AUGUST 2, 1910.
(For copy of patent see Patent Exhibit Book.)

DEFENDANT'S EXHIBITS Nos. 281 to 285, INCLUSIVE.

U. S. PATENTS PRODUCED BY MOSES L. CROSSLEY.
(For copies of patents see Patent Exhibit Book.)

Exhibit No.	*No. of Patent*	*Date*
281	733,280	July 7, 1903.
282	1,063,173	May 27, 1913.
283	682,523	Sept. 10, 1901
284	724,789	April 7, 1903.
285	739,145	Sept. 15, 1903.

DEFENDANT'S EXHIBIT No. 286.

E. I. DU PONT DE NEMOURS & COMPANY
Expense incurred for Chemical Research upon Dyes and Dye Intermediates to June 30th, 1921.

Benzene Intermediates	$893,054.16
Naphthalene Intermediates	837,218.13

Sulphur Colors	$327,631.62
Alizarine Colors	103,417.94
Ponsol Colors	426,967.35
Indigo	250,545.61
Other Colors	700,621.43
Hydrosulphite	74,665.97
Miscellaneous	251,436.81
Total	$3,865,559.02

NOTE: Above figures do not include Administrative Expense of the Central Chemical Department.

DEFENDANT'S EXHIBIT No. 287.

STIPULATION

Section 10 (f) litigation
and Schedules.

DISTRICT COURT OF THE UNITED STATES,
DISTRICT OF DELAWARE.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
THE CHEMICAL FOUNDATION,
INCORPORATED,
Defendant.
STIPULATION.

IT IS HEREBY STIPULATED between the parties to this cause, as follows:

(1) The schedule hereto attached marked Schedule "A" comprises a full and correct list of all suits purporting to be brought under Section 10F of the Trading with the Enemy Act for the purpose of col-

lecting compensation from licensees under all Federal Trade Commission licenses affecting or involving patents, trade marks and other rights involved in this action, classified according to the numbers of the respective Federal Trade Commission licenses to which they appertain.

(2) All of the suits listed in said Schedule "A" are now pending and undisposed of.

(3) Said Schedule "A" together with this stipulation may be offered by defendant as evidence of the facts therein set forth without production of primary documentary evidence in support thereof; but the plaintiff waives no proper or valid objection to the admissibility in this action of proof of such facts and reserves to itself the right to object to the admissibility of such evidence upon any ground which might be or might have been urged against the admissibility of primary documentary evidence thereof.

(4) A true copy of the bill of complaint filed by the Alien Property Custodian as plaintiff in the suit so listed under the caption "License No. 47" in said Schedule "A" is hereto attached, marked Schedule "B". For the purposes of this cause only it is agreed that the bills of complaint filed by said Custodian in the other suits filed by him as set forth in Schedule "A" are in substantially the same form as said Schedule "B".

(5) A true copy of the bill of complaint as filed by Badische Anilin & Soda Fabrik as plaintiff, in the suit brought in the United States District Court for the Southern District of New York, as listed under the caption "License No. 38" in said Schedule "A" is hereto attached, marked Schedule "C". For the

purposes of this cause only it is agreed that the bills of complaint filed by plaintiffs other than The Chemical Foundation, Incorporated and the Alien Property Custodian, in the suits so listed in Schedule "A" are in substantially the same form as said Schedule "C".

(6) Each of the said copies of bills of complaint, Schedules "B" and "C" may be offered in evidence by the defendant as a type of the bills of complaint filed by the Alien Property Custodian and by such other plaintiffs respectively, with the like force and effect as though such copy were duly certified; but the plaintiff in so stipulating reserves to itself the right to object to the admissibility thereof upon any ground which might be urged against the admissibility of such duly certified copy.

Dated, at Wilmington, Delaware,
this 19 day of July, 1923.

UNITED STATES OF AMERICA,
Plaintiff,
By (Sgd.) HERMAN J. GALLOWAY,
Solicitor.

THE CHEMICAL FOUNDATION, INC.,
Defendant.
By (Sgd.) LUCIEN H. BOGGS,
Solicitor.

SCHEDULE "*A.*"

List of suits purporting to be brought under Section 10(f) of the Trading with the Enemy Act for the purpose of collecting compensation from licensees under all Federal Trade Commission licenses affecting or involving patents, trade marks, and other rights involved in the suit of the United States of America v. The Chemical Foundation, Incorporated, classified according to the numbers of the respective Federal Trade Commission licenses to which each of said suits respectively appertain.

(Note 1) In cases where a bill of complaint has been filed by the same plaintiff against the same defendants under the same license or licenses in two or more different Districts, such bills of complaint for the purposes of this suit are identical in all respects except as to venue.

(Note 2) Where the same suit relates to two or more licenses bearing different Arabic numerals, such suit is listed separately under each of the licenses which it affects.

(Note 3) In all cases where two or more plaintiffs (exclusive of both the Chemical Foundation, Incorporated, and the Alien Property Custodian) have filed suit under the same license, the respective bills of complaint show that the claims of the plaintiffs are based upon the alleged ownership of rights under different patents or trade-marks covered by such license. In other words, it does not appear that in any case in said suits ownership of the same rights under the same patents or trade-marks is asserted by more than one plaintiff claiming to be the owner thereof prior to seizure by the Alien Property Custodian.

LICENSES Nos. 1 1-A 1-B 1-C 1-D

No suit by Alien Property Custodian

Chemical Foundation, Inc.

vs.

Jay Frank Schamberg, George W. Raiziss and John A. Kolmer, individually, and as constituent members of the unincorporated, voluntary association, known as the Dermatological Research Labs.

and

Frank White, as Treas. of U. S. — Eastern Dist. of Pa. Equity No. 2567

Farbwerke vorm. Meister Lucius & Bruning

vs.

Dermatological Research Labs. unincorporated; Jay Frank Schamberg, Geo. W. Raiziss and John A. Kolmer and its successor, Dermatological Research Institute,

and

Frank White, as Treas. of U. S. — East. Dist. of Pa. Equity No. 2573

LICENSE No. 2, 2-A, 2-B, 2-C, 2-D

No suit by Alien Property Custodian

Chemical Foundation, Inc.

vs.

Takamine Laboratory, Inc. (a corp.)

and

Frank White, as Treas. of U. S. — So. Dist. of N. Y. Equity No. 24-132

Chemical Foundation, Inc.
vs.
Takamine Laboratory, Inc. (a corp.)
and
Frank White, as Treas. of U. S.
Dist. of New Jersey
Equity No. 3668

Farbwerke vorm. Meister Lucius & Bruning
vs.
Takamine Laboratory, Inc. (a corp.)
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y.
Eq. No. 24-170

Farbwerke vorm. Meister Lucius & Bruning
vs.
Takamine Laboratory, Inc., (a corp.)
and
Frank White, as Treas. of U. S.
Dist. of New Jersey
Eq. No. 3695

LICENSE No. 3

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian
License cancelled 7/1/18

Farbwerke vorm. Meister Lucius & Bruning
vs.
Farbwerke Hoechst Company
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y.
Equity No. 24-150

(This suit involves licenses Nos. 3, 3d and 4).

LICENSE NO. TRADEMARK 3

No suit by Chemical Foundation, Inc.

Thomas W. Miller, as A. P. C.
vs.
Drager Oxygen Apparatus Co. — So. Dist. of N. Y. Eq. No. 24-167
and
Frank White, as Treas. of U. S.

(This suit involves Licenses Nos. 42, 43, 44, 46 and T. M. 3)

Alexander Bernard Draeger,
vs.
American Atmos Corporation formerly Draeger Oxygen Apparatus Company — So. Dist. of N. Y. Eq. No. 24-164
and
Frank White, as Treas. of U. S.

(This suit involves licenses Nos. 42, 43, 44, 46 and T. M. 3)

LICENSE NO. 3-A

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian
License cancelled 7/1/18

Farbwerke vorm. Meister Lucius & Bruning
vs.
Farbwerke Hoechst Company — So. Dist. of N. Y. Eq. No. 24-150
and
Frank White, as Treas. of U. S.

(This suit involves Licenses Nos. 3, 3a and 4)

LICENSE No. 4.

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian
License cancelled 7/1/18

Farbwerke vorm. Meister Lucius & Bruning vs. Farbwerke Hoechst Company and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Eq. No. 24-150

(This suit involves licenses Nos. 3, 3A and 4).

LICENSE No. 5

No suit by Alien Property Custodian

Chemical Foundation, Inc. vs. Rector Chemical Company, Inc., (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Eq. No. 24-129

Farbwerke vorm. Meister Lucius & Bruning vs. Rector Chemical Company, Inc., (a corp.) and Frank White, as Treas of U. S.	So. Dist. of N. Y. Eq. No. 24-149

LICENSE No. 7.

No suit by former enemy owners of patents involved.

Chemical Foundation, Inc.,
vs.
Pacific Flush Tank Company (a corporation) — No. Dist. of Ill. Equity No. 2786
and
Frank White, as Treas. of U. S.

Thomas W. Miller, as A. P. C.
vs.
Pacific Flush Tank Company (a corporation) — No. Dist. of Ill. Equity No. 2820
and
Frank White, as Treas. of U. S.

LICENSE No. 8 8-A 8-B 8-C 8-D

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
Diarsenol Company, Inc. (a corporation) — West Dist. of N. Y. Equity No. 392-C
and
Frank White, as Treas. of U. S.

Farbwerke vorm. Meister Lucius & Bruning
vs.
Diarsenol Company, Inc. (a corporation) — West Dist. of N. Y. Equity No. 395-C
and
Frank White, as Treas. of U. S.

LICENSE No. 9.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Abbott Laboratories, (a corporation) and Frank White, as Treas. of U. S.	Northern Dist. of Ill. Equity No. 2787
Farbwerke vorm. Meister Lucius & Bruning vs. Abbott Laboratories, (a corporation) and Frank White, as Treas. of U. S.	Northern Dist. of Ill. Equity No. 2818

LICENSE No. 10.

No suit by former enemy owners of patents involved.

Chemical Foundation, Inc., vs. Bermuth Lemcke, Inc. (a corporation) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-133
Thomas W. Miller, as A. P. C. vs. Bermuth Lemcke Company, and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-158

LICENSE No. 12.

No suit by Chemical Foundation, Inc.

No suit by Alien Property Custodian.

Farbwerke vorm. Meister Lucius & Bruning **vs.** Calco Chemical Co., Inc., and Frank White, as Treas. of U. S.	Dist. of New Jersey Equity No. 3694

LICENSE No. 15

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Abbott Laboratories, (a corporation) and Frank White, as Treas. of U. S.	Northern Dist. Illinois Equity No. 2788

Chemische Fabrik auf Aktien (vorm E. Schering) vs. Abbott Laboratories, Inc., and Frank White, as Treas. of U. S. of America.	Northern Dist. Illinois Equity No. 2817

LICENSE No. 18.

No suit by Alien Property Custodian

Chemical Foundation, Incorporated vs. E. I. duPont de Nemours & Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of Delaware Equity No. 486

Badische Anilin & Soda Fabrik
vs.
E. I. duPont de Nemours & Co. (a corp.) — Dist. of Delaware Equity No. 495
and
Frank White, as Treas. of U. S.

(This suit involves Licenses Nos. 18, 18-A, 19 and 20).

LICENSE No. 18-A

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian.

Badische Anilin & Soda Fabrik
vs.
E. I. duPont de Nemours & Co. (a corp.) — Dist. of Delaware Equity No. 495
and
Frank White, as Treas. of U. S.

(This suit involves Licenses No. 18, 18-A, 19 and 20)

LICENSE No. 19.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
E. I. duPont de Nemours & Co. (a corp.) — Dist. of Delaware Equity No. 487
and
Frank White, as Treas. of U. S.

Farbwerke vorm. Meister Lucius & Bruning
vs.
E. I. duPont de Nemours & Co. (a corp.) — Dist. of Delaware Equity No. 492
and
Frank White, as Treas. of U. S.

Deutsche Gold & Silver Scheide Anstalt vorm Roessler
vs.
E. I. duPont de Nemours & Co. (a corp.)
and
Frank White, as Treas. of U. S.
Dist. of Delaware
Equity No. 494

Badische Anilin & Soda Fabrik
vs.
E. I. duPont de Nemours & Co. (a corp.)
and
Frank White, as Treas. of U. S.
Dist. of Delaware
Equity No. 495

(This suit involves Licenses Nos. 18, 18-A, 19 and 20.)

LICENSE No. 20

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian.

Badische Anilin & Soda Fabrik
vs.
E. I. duPont de Nemours & Co. (a corp.)
and
Frank White, as Treas. of U. S.
Dist. of Delaware
Equity No. 495

(This suit involves Licenses No. 18, 18-A, 19 and 20).

LICENSE No. 21

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian.

Chemische Fabrik Griesheim Elektron
vs.
E. I. duPont de Nemours & Co. (a corp.)
and
Frank White, as Treas. of U. S.
Dist. of Delaware
Equity No. 493

LICENSE No. 24

No suit by Chemical Foundation, Inc.
No suit by Alien Property Custodian.

Badische Anilin & Soda Fabrik
vs.
E. C. Klipstein & Sons Co. and Frank White, as Treas. of U. S. — Southern Dist. of N.Y. Equity No. 24-155

(This suit involves Licenses Nos. 24 and 38)

Badische Anilin & Soda Fabrik
vs.
E. C. Klipstein & Sons Co. and Frank White, as Treas. of U. S. — District of New Jersey Equity No. 3691

(This suit involves Licenses Nos. 24 and 38)

LICENSE No. 27.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S. — So. Dist. of N. Y. Equity No. 24-119

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S. — West. Dist. of N. Y. Equity No. 391-C

Chemical Foundation, Inc., vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	East. Dist. of Pa. Equity No. 2559

Aktiengessellschaft fur anilin Fabrikation vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-151

(This suit involves Licenses Nos. 27 and 30)

Farbwerke vorm. Meister Lucius & Bruning vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-146

(This suit involves Licenses Nos. 27, 28 and 30)

Badische Anilin & Soda Fabrik vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-154

(This suit involves Licenses Nos. 27, 28, 29 and 30)

LICENSE No. 28.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-120
Chemical Foundation, Inc., vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	West. Dist. of N. Y. Equity No. 388-C
Chemical Foundation, Inc., vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	East. Dist. of Pa. Equity No. 2561
Kalle & Co. Aktiengesellschaft vs. National Aniline & Chem. Co. Inc. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-152

(This suit involves Licenses Nos. 28 and 30)

Farbwerke vorm. Meister Lucius & Bruning
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y. Equity No. 24-146

(This suit involves Licenses Nos. 27, 28 and 30)

Badische Anilin & Soda Fabrik
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y. Eq. No. 24-154

(This suit involves Licenses Nos. 27, 28, 29 and 30)

LICENSE No. 29.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y. Equity No. 24-121

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.
West. Dist. of N. Y. Equity No. 390-C

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.
East. Dist. of Pa. Equity No. 2563

Badische Anilin & Soda Fabrik
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y. Equity No. 24-154

(This suit involves Licenses Nos. 27, 28, 29 and 30).

LICENSE No. 30.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White as Treas. of U. S.
So. Dist. of N. Y. Equity No. 24-122

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.
West. Dist. of N. Y. Equity No. 389-C

Chemical Foundation, Inc.,
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.
East. Dist. of Pa. Equity No. 2565

Aktiengesellschaft fur Anilin Fabrikation
vs.
National Aniline & Chemical Co. Inc. (corp.)
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y. Equity No. 24-151

(This suit involves Licenses Nos. 27 and 30)

Farbwerke vorm. Meister Lucius & Bruning
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y. Equity No. 24-146

(This suit involves Licenses Nos. 27, 28 and 30)

Badische Anilin & Soda Fabrik
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y. Equity No. 24-154

(This suit involves Licenses Nos. 27, 28, 29 and 30)

LICENSE No. 30

Kalle & Company, Aktiengesellschaft,
vs.
National Aniline & Chem. Co. Inc. (a corp.)
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-152

(This suit involves Licenses Nos. 28 and 30)

LICENSE No. 33

No suit by Chemical Foundation, Inc.,
No suit by Alien Property Custodian.

Badische Anilin & Soda Fabrik
vs.
Merrimac Chemical Company
and
Frank White, as Treas. of U. S.

District of Mass.
Equity No. 1741

LICENSE No. 34

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-123

Chemical Foundation, Inc.,
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White, as Treas. of U. S.

East. Dist. of N. Y.
Equity No. 1084

Farbwerke vorm. Meister Lucius & Bruning
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-147

(This suit involves licenses Nos. 34, 34-A and 35).

LICENSE No. 34-A

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-124

Chemical Foundation, Inc.,
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White as Treas. of U. S.

East. Dist. of N. Y.
Equity No. 1085

Farbwerke vorm. Meister Lucius & Bruning
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-147

(This suit involves licenses Nos. 34, 34-A and 35)

LICENSE No. 35

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White as Treas. of U. S.

So. Dist. of N. Y. Equity No. 24-125

Chemical Foundation, Inc.,
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White as Treas. of U. S.

East. Dist. of N. Y. Equity No. 1086

Farbwerke vorm. Meister Lucius & Bruning
vs.
H. A. Metz Laboratories, Inc. (a corp.)
and
Frank White as Treas. of U. S.

So. Dist. of N. Y. Equity No. 24-147

(This suit involves licenses Nos. 34, 34-A and 35).

LICENSE No. 36

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
General Ceremics Company (a corp.)
and
Frank White as Treas. of U. S.

So. Dist. of N. Y. Equity No. 24-131

Chemical Foundation, Inc.,
vs.
General Ceremics Company (a corp.)
and
Frank White as Treas. of U. S.
District of N. J.
Equity No. 3669

Fritz Raschig,
vs.
General Ceremics Company (a corp.)
and
Frank White as Treas. of U. S.
Dist. of N. J.
Equity No. 3692

LICENSE No. 38

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
E. C. Klipstein & Sons Co.,
and
Frank White as Treas. of U. S.
Southern Dist. of N. Y.
Equity No. 24-127

Chemical Foundation, Inc.,
vs.
E. C. Klipstein & Sons Co.,
and
Frank White as Treas. of U. S.
Dist. of New Jersey
Equity No. 3670

Badische Anilin & Soda Fabrik
vs.
E. C. Klipstein & Sons Co.,
and
Frank White, as Treas. of U. S.
So. Dist. of New York
Equity No. 24-155

(This suit involves Licenses Nos. 24 and 38)

Badische Anilin & Soda Fabrik vs. E. C. Klipstein & Sons Co., and Frank White, as Treas. of U. S.	District of New Jersey Equity No. 3691

(This suit involves Licenses Nos. 24 and 38)

LICENSE No. 39

Chemical Foundation, Inc., vs. Merck & Company, (a corporation) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-130

Thomas W. Miller, as A. P. C. vs. Merck & Company, a corporation organized and existing under the Laws of the State of New York, and Frank White, as Treas. of U. S.	So. Dist. of New York Equity No. 24-168

Hans Knoll, Albert Knoll & Max Daege, constituting the firm of Knoll & Co. vs. Merck & Company and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-143

LICENSE No. 42

Chemical Foundation, Inc.,
vs.
American Atmos Corporation (a corp.)
and
Frank White, as Treas. of U. S.

Southern Dist. of N. Y.
Equity No. 24-115

Chemical Foundation, Inc.,
vs.
American Atmos Corporation (a corp.)
and
Frank White, as Treas. of U. S.

Western Dist. of Pa.
Equity No. 724

Thomas W. Miller, as A. P. C.
vs.
Draeger Oxygen Apparatus Co.
and
Frank White, as Treas. of U. S.

Southern Dist. of N. Y.
Equity No. 24-117

(This suit involves Licenses Nos. 42, 43, 44 and 46 and Trademark 3).

Alexander Bernard Draeger,
vs.
American Atmos Corporation, formerly known as the Draeger Oxygen Apparatus Company
and
Frank White, as Treas. of U. S.

Southern Dist. of N. Y.
Equity No. 24-164

(This suit involves Licenses Nos. 42, 43, 44, 46 and Trademark 3).

NOTE: Licenses Nos. 42, 43, 44 and 46 were orig-

inally issued to "Draeger Oxygen Apparatus Company," a corporation. Thereafter, and prior to the institution of any of the suits concerned with said licenses the corporate name of the licensee was changed to American Atmos Corporation.

LICENSE No. 43

Chemical Foundation, Inc.,
vs.
American Atmos Corporation (a corp.)
and
Frank White, as Treas. of U. S.

So. Dist. of New York
Equity No. 24-116

Chemical Foundation, Inc.,
vs.
American Atmos Corporation (a corp.)
and
Frank White, as Treas. of U. S.

West. Dist. of Pa.
Equity No. 725

Thomas W. Miller, as A. P. C.
vs.
Draeger Oxygen Apparatus Company
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-167

(This suit involves Licenses Nos. 42, 43, 44 and 46 and Trademark 3).

Alexander Bernard Draeger,
vs.
American Atmos Corporation, formerly known as the Draeger Oxygen Apparatus Company
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y. Equity No. 24-164

(This suit involves Licenses Nos. 42, 43, 44, 46 and T. M. 3).

LICENSE No. 44

Chemical Foundation, Inc.,
vs.
American Atmos Corporation (a corp.)
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y. Equity No. 24-117

Chemical Foundation, Inc.,
vs.
American Atmos Corporation (a corp.)
and
Frank White, as Treas. of U. S.
West Dist. of Pa. Equity No. 726

Thomas W. Miller, as A. P. C.
vs.
Draeger Oxygen Apparatus Co.
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y. Equity No. 24-167

(This suit involves Licenses Nos. 42, 43, 44 and 46 and Trademark 3).

Alexander Bernard Draeger, vs American Atmos Corporation, formerly known as the Draeger Oxygen Apparatus Company and Frank White, as Treas. of U. S.	Southern Dist. of N. Y. Equity No. 24-164

(This suit involves Licenses Nos. 42, 43, 44, 46 and T. M. 3).

LICENSE No. 46

Chemical Foundation, Inc., vs. American Atmos Corporation (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-118

Chemical Foundation, Inc., vs. American Atmos Corporation (a corp.) and Frank White, as Treas. of U. S.	West. Dist. of Pa. Equity No. 727

Thomas W. Miller, as A. P. C. vs. Draeger Oxygen Apparatus Company and Frank White, as Treas. of U. S.	Southern Dist. of N. Y. Equity No. 24-167

(This suit involves Licenses Nos. 42, 43, 44 and 46 and T. M. 3).

Alexander Bernard Draeger, vs. American Atmos Corporation, formerly known as the Draeger Oxygen Apparatus Company and Frank White, as Treas. of U. S.	Southern Dist. of N. Y. Equity No. 24-164

(This suit involves Licenses Nos. 42, 43, 44, 46 and Trademark 3).

LICENSE No. 47

Chemical Foundation, Inc., vs. Reinschild Chemical Company, (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-128

Thomas W. Miller, as A. P. C. vs. Reinschild Chemical Company, (a corp.) organized and existing under the laws of the State of New York and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-159

Chemische Fabrik Helfenberg A. G. vs. Reinschild Chemical Company, Inc. and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-153

3275

Chemische Fabrik Helfenberg a foreign corporation, vs. Reinschild Chemical Corporation, an American corporation, and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-157
Chemische Fabrik Helfenberg A. G. formerly Eugene Dieterich, a corporation of Germany vs. Reinschild Chemical Co. and Frank White, as Treas. of U. S. and Thomas W. Miller, as A. P. C. and Chemical Foundation, Inc.,	So. Dist. of N. Y. Equity No. 24-165

LICENSE No. 50

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Ault & Wiborg Co. (a corp.) and Cincinnati Chemical Works, Inc. (a corporation) and Frank White, as Treas. of U. S.	Dist. of Delaware Equity No. 484

The Chemical Foundation, Inc., vs. Ault & Wiborg Co. (a corp.) and Cincinnati Chemical Works, Inc. (a corporation) and Frank White, as Treas. of U. S.	So. Dist. of Ohio Equity No. 266
Aktiengesellschaft fur Anilin Fabrikation vs. Ault & Wiborg Co. (a corporation) and Cincinnati Chemical Works, Inc. and Frank White, as Treas. of U. S.	Dist. of Delaware Equity No. 491
Aktiengesellschaft fur Anilin Fabrikation vs. Ault & Wiborg Co. (a corporation) and Cincinnati Chemical Works, Inc. and Frank White, as Treas. of U. S.	So. Dist. of Ohio Equity No. 268

LICENSE No. 52

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Ultro Chemical Corporation (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-126

Chemical Foundation, Inc., vs. Ultro Chemical Corporation (a corp.) and Frank White, as Treas. of U. S.	Eastern Dist. of N. Y. Equity No. 1087

Farbwerke vorm. Meister Lucius & Bruning vs. Ultro Chemical Corporation (a corp.) and Frank White, as Treas. of U. S.	Southern Dist. of N. Y. Equity No. 24-148

LICENSE No. 53.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-112

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of N. J. Equity No. 3671

Farbwerke vorm. Meister Lucius & Bruning
vs.
Consolidated Color & Chemical Co. (a corp.) — Dist. of New Jersey
and — Equity No. 3696
Frank White, as Treas. of U. S.
(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

LICENSE No. 54

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.) — So. Dist. of New York
and — Equity No. 24-113
Frank White, as Treas. of U. S.

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.) — District of New Jersey
and — Equity No. 3676
Frank White, as Treas. of U. S.

Farbwerke vorm. Meister Lucius & Bruning
vs.
Consolidated Color & Chemical Co. (a corp.) — District of N. J.
and — Equity No. 3696
Frank White, as Treas. of U. S.

(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

LICENSE No. 56.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.
So. Dist. of New York
Equity No. 24-114

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.
District of New Jersey
Equity No. 3673

Farbwerke vorm. Meister Lucius & Bruning
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.
Dist. of New Jersey
Equity No. 3696

(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

LICENSE No. 56.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.
So. Dist. of N. Y.
Equity No. 24-110

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.

Dist. of N. J.
Equity No. 3672

Farbwerke vorm. Meister Lucius & Bruning
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.

Dist. of N. J.
Equity No. 3696

(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

LICENSE No. 57

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.

So. Dist. of N. Y.
Equity No. 24-111

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.)
and
Frank White, as Treas. of U. S.

Dist. of New Jersey
Equity No. 3674

Farbwerke vorm. Meister Lucius & Bruning
vs.
Consolidated Color & Chemical Co. (a corp.) — Dist. of New Jersey Equity No. 3696
and
Frank White, as Treas. of U. S.

(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

LICENSE No. 58.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.) — So. Dist. of N. Y. Equity No. 24-108
and
Frank White, as Treas. of U. S.

Chemical Foundation, Inc.,
vs.
Consolidated Color & Chemical Co. (a corp.) — Dist. of N. J. Equity No. 3677
and
Frank White, as Treas. of U. S.

Farbwerke vorm. Meister Lucius & Bruning
vs.
Consolidated Color & Chemical Co. (a corp.) — Dist. of N. J. Equity No. 3696
and
Frank White, as Treas. of U. S.

(This suit involves Licenses Nos. 53, 54, 55, 56, 57 and 58)

LICENSE No. 59.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	So. Dist. of N. Y. Equity No. 24-109

Chemical Foundation, Inc., vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of New Jersey Equity No. 3675

Kalle & Company Aktiengesellschaft vs. Consolidated Color & Chemical Co. (a corp.) and Frank White, as Treas. of U. S.	Dist. of New Jersey Equity No. 3693

LICENSE No. 61.

No suit by Alien Property Custodian.

Chemical Foundation, Inc., vs. Semet-Solvay Company (a corporation) and Frank White, as Treas. of U. S.	Northern Dist of N. Y. Equity No. 370

Badische Anilin & Soda Fabrik	
vs.	
Semet-Solvay Company (a corporation)	Northern Dist of N. Y. Equity No. 371
and	
Frank White, as Treas. of U. S.	

LICENSE No. 63.

No suit by Alien Property Custodian.

Chemical Foundation, Inc.,	
vs.	
Horatio Nelson Fraser,	Eastern Dist. of New York
and	
Chemical Refining Syndicate	Equity No. 1091
and	
Frank White, as Treas. of U. S.	

Chemical Foundation, Inc.,	
vs.	
Horatio Nelson Fraser,	
and	District of Delaware
Chemical Refining Syndicate	Equity No. 485
and	
Frank White, as Treas. of U. S.	

Chemische Fabrik auf Aktien (vorm E. Shering)	
vs.	
Horatio Nelson Fraser,	Eastern Dist. of N. Y. Equity No. 1096
and	
Chemical Refining Syndicate	
and	
Frank White, as Treas. of U. S.	

SCHEDULE "*B.*"

IN THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK.

THOMAS W. MILLER, as Alien Property Custodian, Plaintiff, against REINSCHILD CHEMICAL COMPANY, a corporation organized and existing under the laws of the State of New York, and FRANK WHITE, as Treasurer of the United States, Defendants.	In Equity No. 24-159

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

Thomas W. Miller, as Alien Property Custodian, having his official residence and place of business in the City of Washington, in the District of Columbia, and his personal residence and citizenship in the City of Wilmington, in the State and District of Delaware, plaintiff, brings this bill of complaint against Reinschild Chemical Company, a corporation organized and existing under the laws of the State of New York and having its residence and principal place of business in the Borough of Manhattan, in the City and State of New York, Southern District of New York, and Frank White, as Treasurer of the United States, who is made a party hereto in conformity with paragraph (f) of Section 10 of the Act of Congress, approved October 6, 1917, and known as the "Trading with the enemy Act," defendants, and plaintiff complains and upon information and belief states:

First.—That this suit is brought under the provisions of the Act of Congress, known as the "Trading with the enemy Act," approved October 6, 1917, and Acts amendatory thereof and supplemental thereto, and the Proclamations and Executive Orders of the President issued in pursuance thereof.

Second.—That defendant, Reinschild Chemical Company is a corporation organized and existing under the laws of the State of New York, and has its principal place of business in the Borough of Manhattan, City, County and State of New York, and within the Southern District of New York.

Third.—That Karl Dieterich, of Helfenberg, Germany, and Adolph Schmidt, of Dresden, Germany, prior to August 25, 1908, were the joint original, and first inventors of an invention, Agar-Agar-Cascara Product and Process of making same, lawfully filed and prosecuted an application for United States patent therefor, and having complied in all respects with the statutes and rules of the Patent Office, United States Patent No. 896,807 was lawfully granted and issued pursuant to said application, on August 25, 1908, to the said Karl Dieterich and Adolph Schmidt. Profert is made of said patent or a certified copy thereof.

The said invention of the said Karl Dieterich and Adolph Schmidt was new, useful and not known or used by others in this country before their invention thereof, and not patented or described in any printed publication anywhere before their invention thereof for more than two years prior to said application for United States patent, and not in public use or on sale in the United States for more than two years prior to the application and not patented in any foreign country on an application filed more than one year before their said application in the United States, and not abandoned.

Fourth.—That said Karl Dieterich and Adolph Schmidt, being prior to December 14, 1909, the joint original, first and sole inventor of an invention, Agar-Agar-Cascara Product and Process of making same, lawfully filed and prosecuted an application for United States Patent therefor, and having complied in all respects with the statutes and rules of the Patent Office, United States Patent No. 943,163 was lawfully granted and issued pursuant to the said application on December 14, 1909, to the said Karl Dieterich and Adolph Schmidt. Profert is made of said patent No. 943,163 or a certified copy thereof.

The said invention of said Karl Dieterich and Adolph Schmidt was new, useful and not known or used by others in this country before their invention thereof, and not patented or described in any printed publication anywhere before their invention thereof, for more than two years prior to said application for United States patent and not in public use or on sale in the United States for more than two years prior to the application, and not patented in any foreign country on an application filed more than one year before their said application in the United States, and not abandoned.

Fifth.—That by assignments duly recorded in the United States Patent Office, the said Karl Dieterich and Adolph Schmidt, assigned and conveyed the entire right, title and interest into the several letters patent Nos. 896,807 and 943,163 respectively, to Chemische Fabrik, of Helfenberg, Germany.

Sixth.—That A. Mitchell Palmer, then Alien Property Custodian of the United States and acting under the provisions of the said "Trading with the enemy Act," the amendments thereto and the Executive Orders and Proclamations issued in pursuance thereof, did on the 1st day of March, 1919, as such

official, determine after investigation the said Chemische Fabrik to be an enemy not holding a license granted by the President within the purview of said Act as amended and said Orders and Proclamations, and did further determine after investigation that said United States Patents Nos. 896,807 and 943,163 and every right, title and interest with respect thereto including all damages and profits recoverable at law or in equity from any person, firm, corporation or government for past infringements thereof, subject to the rights, if any, of the said Reinschild Chemical Company, belonged to or were held for, or on account of, or on behalf of, or for the benefit of said enemy, and did require the same to be conveyed, transferred, assigned and delivered to him as Alien Property Custodian of the United States, and the said A. Mitchell Palmer, then Alien Property Custodian of the United States, did on the 24th day of March, 1919, file with the Commissioner of Patents at Washington in the District of Columbia, a copy of said determination and requirement, to be recorded in the proper office for filing, registering or recording conveyances, transfers or assignments of patents, or any rights therein, or any other rights, and said requirement made pursuant to said Act was duly recorded on the 24th day of March, 1919, in Liber Z106 Page 194 of Transfers of Patents in the United States Patent Office, and the said A. Mitchell Palmer, as such Alien Property Custodian, did on the 24th day of March, 1919, seize said letters patent, and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government for past infringement thereof, subject to the rights, if any, of said Reinschild Chemical Company, which seizure was effectual to convey to the Alien Property Custodian, every right, title and interest and estate of the said

enemy in and to the property seized, as well as every power and authority of the said enemy thereunder.

Seventh.—That on or about the 10th day of April, 1919, the Alien Property Custodian, sold, assigned, and conveyed to The Chemical Foundation, Inc., a corporation of the State of Delaware, the entire right, title and interest in and to the said several letters patent.

Eighth.—That in accordance with Section 10 of the said "Trading with the Enemy Act," the Federal Trade Commission on or about the 31st day of December, 1918, issued to the defendant, Reinschild Chemical Company, License No. 47 under the said several letters patent, Nos. 896,807 and 943,163, imposing upon said licensee therein, certain terms and conditions among which was the requirement that the said licensee shall pay to the Alien Property Custodian on February 1st, 1919, as royalty under said license No. 47, a sum equal to 5% of the gross amounts received by said licensee during the period between August 15, 1918 and December 31, 1918, from the sale of a product described and claimed in said letters patent, Nos. 896,807 and 943,163, and in addition to the amount to be paid February 1, 1919, shall thereafter pay to the Alien Property Custodian within thirty days after the semi-annually periods ending June 1st and December 1st of each year, a royalty of 5% of the gross amounts received from such sales during the respective period stated, which said license No. 47 is still in full force and effect, unrevoked and uncancelled, and said defendant, Reinschild Chemical Company is operating thereunder, and has manufactured and caused to be manufactured in accordance with the processes, methods and inventions set forth in said letters patent, and has paid to the Alien Property Custodian certain sums of money purporting to be the

amounts required to be paid under the terms of said license No. 47.

Ninth.—Plaintiff was prior to the transfer of said letters patent to The Chemical Foundation, Inc., and after the seizure thereof, the owner of said patents and the rights therein and thereunder, theretofore, belonging to the aforesaid enemy, and under paragraph (f) of Section 10 of said "Trading with the enemy Act," is within one year from the end of the war entitled to file a bill in equity against the said licensee in the District Court of the United States for the District in which the said licensee resides or has its principal place of business, for recovery from the said licensee for all use and enjoyment of said patented invention, to recover from the said licensee a reasonable royalty, to terminate said license, and to obtain an injunction to restrain the licensee from infringement hereafter.

Plaintiff therefore files this bill of complaint and prays that this court may decree that the plaintiff recover from the said licensee for all use and enjoyment of the said patented inventions, and that the court fix the amount of said payment as a reasonable royalty, that this court require the defendant Reinschild Chemical Company to account to the plaintiff for such reasonable royalty for the use and enjoyment of the said patented inventions and that the amount thereof shall be decreed by the court to be paid to the plaintiff from the fund deposited by said licensee so far as such deposit will satisfy such judgment and decree, and that if after the payment from said fund an amount is still due the plaintiff, the plantiff have judgment against the defendant, Reinschild Chemical Company, for such further amount, and that the court terminate the said license and issue an injunction to restrain the defendant, Reinschild Chemical Company,

from infringement hereafter, and for such other and further relief as to the court may seem just and equitable.

Plaintiff prays for the usual process of this court directed to the said defendants, Reinschild Chemical Company and Frank White, as Treasurer of the United States, directing them to appear and answer this bill of complaint.

THOMAS W. MILLER,
Alien Property Custodian.

DISTRICT OF COLUMBIA,
CITY OF WASHINGTON, *ss.:*

Thomas W. Miller, being duly sworn, deposes and says that he is the Alien Property Custodian of the United States, plaintiff in the above-entitled action, and that he has read the foregoing bill of complaint and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

.....
Alien Property Custodian.

Sworn to before me this day of June, 1922.

.....
Notary Public.

SCHEDULE "*C.*"

File 223

IN THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

BADISCHE ANILIN & SODA FABRIK, Plaintiff, vs. E. C. KLIPSTEIN & SONS COMPANY, and FRANK WHITE, as Treasurer of the United States, Defendants.	In Equity No. 24-155

BILL OF COMPLAINT.

The plaintiff for its bill of complaint alleges:

I. That plaintiff Badische Anilin & Soda Fabrik, is and was during all the times hereinafter mentioned, a corporation organized under the laws of Germany, and having its principal place of business at Ludwigshafen on the Rhine, Germany.

II. On information and belief, that E. C. Klipstein & Sons Company hereinafter referred to as the licensee, is and was during all the times hereinafter mentioned, a corporation organized under the laws of the State of New Jersey, and having its principal place of business in the City of New York, State of New York, and that the defendant, Frank White, is Treasurer of the United States.

III. That this Court has jurisdiction under Section 10 of the Act of Congress known as the "Trading with the Enemy Act," approved Oct. 6, 1917, and also because the controversy is between a citizen of Germany and a corporation having its principal place of business in the City of New York and State of New York.

IV. That the following United States Letters Patent were duly granted to plaintiff as assignee of the respective inventors, under and in accordance with the provisions of the then existing statutes of the United States and Rules of Practice of the United States Patent Office, and that plaintiff has been ever since the grant of the said Letters Patent, and is now, the owner thereof, to wit:

(1) No. 711,377, for Solid Alkaline Hydrosulfites and Process of Making Same, dated Oct. 14, 1902, to Max Bazlen of Ludwigshafen on the Rhine, Germany, assignor to the Badische Anilin & Soda Fabrik of Ludwigshafen on the Rhine Germany, a corporation of Germany.

(2) No. 795,755, for Process of Making Stable Dry Hydrosulfites, dated July 25, 1905, to Max Bazlen of Ludwigshafen on the Rhine, Germany, assignor to the Badische Anilin & Soda Fabrik of Ludwigshafen on the Rhine, Germany, a corporation of Germany.

(3) No. 1,191,480, for Tanning, dated July 18, 1916, to Otto Schmidt of Ludwigshafen on the Rhine, Germany, assignor to the Badische Anilin & Soda Fabrik of Ludwigshafen on the Rhine, Germany, a corporation of Germany.

(4) No. 1,216,612, for Producing Soluble Tanning agents, dated February 20, 1917, to Otto Schmidt of Ludwigshafen on the Rhine, Germany, assignor to the Badische Anilin & Soda Fabrik of Ludwigshafen on the Rhine, Germany, a corporation of Germany.

V. On information and belief, that the Federal Trade Commission, under the authority vested in it by the president of the United States, pursuant to the "Trading with the Enemy Act," granted licenses to the licensee on April 8, 1918, numbered 24, and on August 15, 1918, numbered 38, to make, use and vend within the United States the inventions described in the said United States Letters Patent, and each of them; that said licenses are still in force; that said licenses required the licensee to pay to the Alien Property Custodian royalties under said licenses and derived from the sale of the products included in the said licenses; that the sums so paid were to be deposited by the Alien Property Custodian in the Treasury of the United States, as a trust fund for the licensee and for the owner of the said patents, as by said licenses, or duly authenticated copies thereof, ready in Court to be produced, will appear.

VI. On information and belief, that the licensee thereupon entered upon the use and enjoyment of said licenses, and that substantial sums have been paid by the licensee to the Alien Property Custodian, and deposited by the Alien Property Custodian in the Treasury of the United States, the exact amount being unknown to the plaintiff, and that the licensee has, under said licenses, made large gains and profits from the manufacture, use and sale of the inventions patented by said patents, and each of them.

VII. That this suit is brought for the recovery from the said licensee for all use and enjoyment of the said patented inventions, and to have determined the amount of reasonable license fees or royalties to be paid by the licensee for the use of said patented inventions, and each of them, and to have an accounting of the same and judgment therefor, and to have an order of the Court directing the Treasurer of the

United States to pay to the plaintiff the fund deposited as aforesaid or by the licensee so far as such deposit will satisfy the said judgment and decree.

WHEREFORE, plaintiff demands that it be adjudged and decreed that the plaintiff is entitled to and do recover from the licensee reasonable license fees or royalties for the use of the said patented inventions, and each of them, to be determined by the Court, and that the treasurer of the United States be directed to pay to the plaintiff the fund or moneys deposited with him as aforesaid or by the licensee so far as such deposit will satisfy the said judgment, and that plaintiff have judgment against the licensee for any amount of said reasonable license fees or royalties in excess of the fund so deposited; that the defendants be decreed to pay the costs of this suit, and that the plaintiff may have such other and further relief as to this Honorable Court may seem meet.

BADISCHE ANILIN & SODA FABRIK,
(Sgd.) HANNS WAGNER,
" KARL HOLDERMANN.

By .....
Attorneys in Fact.

(Sgd.) GIFFORD & BULL,
Solicitor.
(Sgd.) LIVINGSTON GIFFORD,
of Counsel.

DEFENDANT'S EXHIBIT No. 288.

MINUTES OF MEETING.
AMERICAN DYES INSTITUTE.
JANUARY 8, 1919.

The annual Meeting of the American Dyes Institute was held at the Hotel Biltmore on Wednesday, January 8th, 1919, at 2 P. M.

Meeting was called to order by Chairman W. H. Cottingham.

As a mark of respect to the late Col. Roosevelt meeting suspended for five minutes by request of W. H. Cottingham, President.

2:05 P. M. Reading of Minutes of Previous Annual Meeting unanimously dispensed with.

Treasurer's report unanimously accepted.

Mr. Charles K. Weston of the E. I. du Pont de Nemours & Co. handed in a letter containing an outline for publicity campaign, which Mr. C. C. Bennett read. The matter was referred to the Publicity Committee, Mr. M. R. Poucher, Chairman.

The Publicity Committee was authorized to print and send out the pamphlet prepared by Mr. Eddy.

Mr. M. R. Poucher was instructed to consider the subject of a trade-mark or stamp to be used by the American Dyes Institute.

Secretary's report was read and adopted. Letters from E. I. du Pont de Nemours & Co., Frank Hemingway, Inc., and National Anline & Chemical Co., Inc., read. Secretary was instructed to report at next meeting firms who are reporting to Barrow, Wade & Guthrie, and those who are not.

Mr. Metz agreed to report on bulk intermediates and some bulk dyes.

Mr. A. J. Eddy's letter of January 3rd, 1919

"Price fixing stops with U. S. Control" to be embodied in the Minutes of this Meeting.

"To MEMBERS:

I wish to call the attention of members to the Washington dispatch reprinted below.

It is a definite announcement of the policy to be pursued by the Attorney General after the first of the year. There is no doubt about the correctness of his interpretation of the Law, and the fact that during the war the Government found it necessary to control and more or less fix prices cannot be considered any excuse for the continuation of the same policy by the different industries affected.

It is needless to say that no Open Price association is permitted to control or fix prices; any such attempt is diametrically opposed to not only the letter but the spirit of the Open Price Plan. An Open Price association is essentially a price-recording institution. In fact, the plan is effective only when there are price variations. If prices are absolutely fixed and known to everybody, then there is no particular need for an Open Price association; such an association is most useful and most effective when competition is freest.

It is apparent from the dispatch reprinted below that the Department of Justice, and no doubt the Federal Trade Commission, will scrutinize more closely than ever the activities of industrial and commercial associations. Therefore, it is important that your association adhere strictly to the letter and spirit of the plan of your organization so that in the future, as in the past, your work will be not only above criticism, but such as to secure the commendation of competitors, customers, and any public official who may have occasion to investigate what you are doing.

Yours very truly,

ARTHUR J. EDDY,
General Counsel.

PRICE FIXING STOPS WITH U. S. CONTROL.

Concerted Action in Any Industry Not to Be Allowed, Gregory Announces.

TO ENFORCE TRUST LAWS.

(By the Associated Press.)

Washington, D. C., Dec. 30.—Concerted price fixing by any industry after the government ceases to exercise price control Jan. 1, will be regarded by the department of justice as in restrain of free competition, it was stated to-day. The explanation was made officially in answer to what happens to wartime price fixing when the war industries board ceases to function at midnight to-morrow.

Anti-Trust Law to Be Enforced.

The attitude of the department of justice, as outlined by Attorney-General Gregory, is that the anti-trust laws, still effective, will be enforced vigorously by the department. They have been in full effect throughout the war, but the department has not regarded the action of industry in maintaining prices fixed by the government as contrary to law. In making this explanation, the attorney-general did not refer to any industry or specific situation in explaining that no violation of anti-trust laws would be permitted.

Other department of justice officials who heretofore have had charge of prosecutions under the anti-trust laws declared that when the war industries board ceases to exercise control of prices Jan. 1 any act of a group of business men tending to prevent free play of competition will be examined in the light of the law.

"Benevolent" Effect Not Considered.

It is felt that although an immediate effect of price agreements might be temporarily to keep prices down and thereby benefit consumers, this result might

soon change and that consequently the situation is full of danger There is no provision in the Law for consideration of whether the effect of the suppression of competition might be "benevolent."

It was said that so far the department had not given particular attention to the steel industry, which submitted to the war industries board a revised list of prices to be effective after Jan. 1. The board did not pass upon the prices and declined to continue its supervision."

Amendments and changes in By-Laws and Constitution read and approved.

On motion unanimously carried, Sections 2, 3 and 4 of the new amendments are to be sent out to members.

National Aniline & Chemical Co.'s., Inc., resolution to Alien Property Custodian regarding patents presented, and after discussion withdrawn for further consideration.

The election of officers for the coming year to be postponed to Thursday, January 16th, 1 P. M. at the Hotel Biltmore, and Chairman was authorized to name Nominating Committee. He named the following:

Mr. Frank Hemingway, Chairman
Mr. M. R. Poucher
Mr. W. T. Miller

Secretary was requested to note when quotations are for export when possible on orders, contracts and quotations. Secretary was instructed to show on his daily bulletin quantity on each quotation

It was understood that the daily bulletin goes to all members of the Institute until further instructions.

On motion of Mr. Miller, Mr. Reeser's proposed new paper was referred to Publicity Committee.

Meeting adjourned at 4 P. M.

(Sgd.) (C. C. BENNETT.)
Secretary.

DEFENDANT'S EXHIBIT No. 289.

MINUTES OF MEETING.
OF AMERICAN DYES INSTITUTE.

April 4th, 1919.

A regular monthly meeting of the American Dyes Institute was held at the Hotel Biltmore, New York City, on Friday, April 4th, 1919.

Luncheon was served at 1:00 P. M., after which the meeting was called to order by Mr. F. M. Fargo, of the Marden, Orth & Hastings Corp.

The following firms were present and represented as follows:

American Aniline Products, Inc.	Mr. Paul Nobbe
Chemical Company of America	Mr. C. Kendall Dr. S. Iserman
Consolidated Color & Chem. Co.	Mr. H. A. Metz
Dicks, David Co., Inc.	Mr. David Major B. F. Welton
The Dow Chemical Company	Mr. Dow James T. Pardee
E. I. duPont de Nemours & Co.	Mr. M. R. Poucher Mr. Protto Mr. Stephenson
Dye Products & Chemical Co.	Mr. C. K. Simon Mr. L. M. Loewenthal
Essex Aniline Works, Inc.	Mr. Kent
Grasselli Chemical Co.	Dr. Wallach
The Heller & Merz Company	Mr. August Merz
Hydrocarbon Chem. Products Co.	Mr. J. R. Brimmer Mr. F. E. Brimmer
Holland Aniline Company	Mr. B. P. Donnelly
Marden, Orth & Hastings Corp.	Mr. F. M. Fargo Mr. G. A. Berry
Merrimac Chem. Co.	Mr. S. W. Wilder Mr. Phil Wilder
National Aniline & Chem. Co.	Mr. Bishop Mr. Serrell Mr. W. T. Miller
Transatlantic Chem. Corp.	Mr. Ed. B. Clary

The following were also present:

Mr. Joseph H. Coate, Jr., representing the Chemical Foundation, Inc., Counsel, Arthur J. Eddy, Esq., and Secretaries, Mr. C. C. Bennett, and Mr. H. E. Danner.

Inasmuch as a copy of the minutes of the previous meeting had been sent to each member, and there were no corrections, on motion, the reading of same was omitted.

The Chairman then introduced Mr. Choate, representing the Chemical Foundation, Inc., who was requested to outline to the members the possibility of a licensing plan governing imports of foreign dyes.

Mr. Choate stated that cablegrams had been received from Europe suggesting importation of dyestuffs from Germany in exchange for food. He stated that the Department of Commerce had suggested that importations of such Dyestuffs should be placed in the hands of the Chemical Foundation, Inc., who would act as agents for the distribution of same, and while the Chemical Foundation, Inc., did not wish to act in this capacity, they had advised the Department of Commerce that they might do so if it were necessary; however, it had been suggested and favorably received by the Department of Commerce that a representative committee should be appointed to co-operate with and help the Department in its investigations as to what dyestuffs should be admitted for importation. Mr. Choate then stated that he and Mr. Miller, of the National Aniline & Chemical Company had been appointed as a committee of two to make recommendations or nominations as to the personnel of such a committee, it being understood that the committee would consist of representatives of Trade Associations covering activities among the Chemical Fraternity, the Consuming Interests, and the Producers or Manufacturers of Dyestuffs.

Therefore, Mr. Choate requested that the members of the American Dyes Institute, representing the Producing or Manufacturing interests, should give Mr. Miller and himself the benefit of their suggestions as to the personnel of the committee who should represent the manufacturing interests.

On motion duly seconded it was

RESOLVED—

That the American Dyes Institute indorses the suggestion that a representative committee, as outlined by Mr. Choate, should be appointed by the Department of Commerce to assist the Department in their work in passing upon the issuing of import licenses for dyestuffs.

There followed a discussion during which a number of names were suggested, following which it was decided that each firm present would there and then indicate on a ballot, its selection for three parties to represent the manufacturing interests as a part of the above mentioned Advisory committee.

Thereupon the member firms present voted, and the result of the ballot was as follows:

Mr. M. R. Poucher, E. I. duPont de Nemours & Company

Dr. Watkins, National Aniline & Chem. Co.

Mr. August Merz, The Heller & Merz Co.,

received respectively the largest vote.

Thereupon, on motion duly seconded, it was unanimously

RESOLVED—

That the American Dyes Institute recommend to Mr. Choate and Mr. Miller that they nominate for the consideration of the Department of Commerce, Mr. Poucher, Dr. Watkins, and Mr. Merz, as representatives of the manufacturing interests in the committee to be appointed by the Department of Commerce as an Advisory Committee in respect to the importation of foreign dyes.

The Treasurer reported as follows:

March 1st 1919 balance		$13,950.51
Received during March		4,259.12
		18,209.63
Expenditures		5,261.99
Balance April 1st 1919		12,947.64
Accounts payable	$10,833.32	
Accounts receivable	36,800.00	

On motion, duly seconded, the above report was accepted as read, and ordered to be filed.

The Secretary reported as follows:

The following members are reporting price information covering Contracts, Orders and Quotations, and the information filed since the Secretary's last report is as follows:

	Contracts	*Orders*	*Quotations*	*T'tl*
Marden, Orth & Hastings	8	367	277	652
The Sherwin-Williams Co.	0	18	35	53
E. I. Du Pont De Nemours & Co.	0	437	214	651
Dicks, David Co. Inc.	0	182	0	182
Dow Chemical Company	1	19	21	41
National Aniline & Chem. Co.	0	1	8	9
	9	1024	555	1588

The total number filed to date is 10,384, as indicated below:

Marden, Orth & Hastings	103	3594	2104	5801
Sherwin-Williams Co.	74	384	374	832
Hydrocarbon Chem. Prod. Co.	0	1	27	28
E. I. Du Pont De Nemours & Co.	105	1302	970	2377
Frank Hemingway, Inc.	0	1	9	10

Dicks, David Co. Inc.	0	621	290	911
Dow Chem. Co.	14	114	286	414
Certified Chem. Company	1	1	0	2
Natl. Aniline & Chem. Co.	0	1	8	9
	297	6019	4068	10,384

The total number of reports filed covers approximately 2,606 customers, of whom 554 have business relations with two or more of the members reporting.

Since the Secretary's last report there have been 15 direct exchanges covering similar products quoted to the same customer, and 6 direct exchanges covering similar products sold to the same customer.

Four (4) of the above quotations resulted in an order.

In reference to the distribution of Pamphlet No. 1, Secretary announces that 2800 of the small pamphlets have been sent to the members of the Institute for their own distribution.

In addition, there have been distributed from the Secretary's office, 2200 pamphlets, as follows:

To members of the Finishers Association	68
To members of the Garment Association	500
To Wholesale Dry Goods Dealers	1160
To The Sweater & Knit Goods Assn.	300
To the Natl. Association of Clothiers	125
To the National Cloak, Suit & Skirt Assn.	50

As per direction at the last meeting, the Secretary circularized each member regarding the resolution adopted in reference to terms. He requested the members to advise whether or not they would be willing to report to the Secretary's office any variations they, the members, made to the terms outlined in the resolution. Up to the present time three (3) members have replied stating their willingness to report this information.

Secretary also requested the members to file a re-

vised list of all Dyes and Intermediates now being manufactured or intended to be manufactured. To date seven (7) members have replied.

On motion, duly seconded, the above report was accepted as read and ordered to be filed:

The Secretary reported that there had been distributed by the members and his office, a total of 5,000 pamphlets (no. 1), and he, the Secretary, stated that among these 5,000 pamphlets distributed there was included a distribution among the members of the following Associations:

National Association of Finishers of Cotton Fabrics
National Assn. of Garment Manufacturers
National Assn. of Sweater & Knitted Textile Mfrs.
National Assn. of Clothiers
National Cloak, Suit & Skirt Mnfrs. Assn.

On discussion the Secretary was instructed to distribute the above mentioned pamphlets to the members of

The Paint & Varnish Association
The Paper Trade Association
The Leather Goods Association
The Silk Association

As to a further distribution among the Consumers of Textiles, the Secretary announced that in order to distribute these pamphlets among the Retail Dry Goods Stores, it would mean a distribution of some 30 odd thousand pamphlets.

There followed a discussion, and it appeared that all or certain parts of this pamphlet might be circularized through the newspapers.

Thereupon, Mr. Bennett was requested to obtain and report to the next Executive Committee an estimate of what it would cost to give publicity to the story included in the pamphlet through representative newspapers and periodicals issued in the trade.

CONDITIONS IN TRADE:

Mr. Poucher stated that there were more inquiries for Dyestuffs and thought this was reflected by an increase in business among the Textile Trades.

Mr. Wilder stated that there was an improvement in business in the past two weeks. He said that the Woolen Goods Trade was brisk and that the Cotton Mills had noted an improvement.

The above seemed to be the feeling of most of the members present.

Mr. Metz stated that his orders and the volume involved was increasing.

Mr. Nobbe suggested that it would be valuable information if the Institute could accumulate knowledge as to what was being manufactured in France, England and other continental countries, and on discussion, Mr. Bennett was instructed to write to the Department of Commerce asking if such information could be obtained.

In connection with the above discussion Mr. Metz said that the members received from time to time circulars covering offerings of foreign Dyes, and he suggested that a compilation of these offerings be made.

Thereupon, on motion of Mr. Metz, duly seconded, it was

RESOLVED:

That all members file with the Secretary a copy of all circulars and offers to sell foreign dyes, same to be tabulated and distributed among the members so that a more or less complete knowledge of foreign activities may be had.

Mr. Donnelly expressed the opinion that inasmuch as the members of the American Dyes Institute were interested in promoting the manufacture and sale of American Dyes, it was not consistent for any of these members, who were also jobbers, to import

and sell any foreign Dyes, which are now made in the United States.

The question was asked if any member present was doing this, and it appeared that no one present was importing foreign Dyes, which are now made in the United States.

This led to reminding the members that they had all been requested to file with the Secretary a complete list of all dyes which they now manufacture or intend to manufacture, and that in answer to an inquiry from the Secretary only seven members had replied. Therefore, the members were again urged to reply to the Secretary's inquiry of March 24th.

Mr. Metz stated that it was his intention to participate in the reporting plan covering several staple products, and that he would notify the Secretary upon what products he would report.

Mr. Miller announced that up to the present time the National Aniline & Chemical Company were reporting on a selected line of fabrics, and that it was now their intention to increase the number of products upon which they would report information, as called for in the reporting plan. Mr. Kent also stated that he believed the Essex Aniline Works, Inc., would shortly participate in the reporting plan.

Mr. Poucher, replying to Mr. Dow, stated that the form of contract of the E. I. duPont de Nemours Company, covering Indigo, guaranteed customers against a decline. There seemed to be some confusion in Mr. Dow's mind as to the extent of this guarantee, and Mr. Poucher stated he would furnish Mr. Dow with a copy of his contract form.

Mr. Miller replied to Mr. Pardee, stating that at the present time his firm was producing 3,000 lbs. per day of Indigo, and that in a short while this production would be increased.

Mr. Dow replied to Mr. Metz and to Mr. Nobbe that he was willing to sell Indigo direct.

Mr. Nobbe stated that he had been quoted 20¢ per pound for Aniline Oil and it developed on inquiry that such a quotation had not been made by any member of the Institute. Mr. Bishop was asked by Mr. Fargo if he was producing and selling Aniline Oil, to which Mr. Bishop replied, "yes."

Mr. Poucher, answering Mr. Kent, advised him that he was quoting Chrysophenine at $3.00 per pound. Mr. Kent stated that his price has been $4.00 per pound.

The next meeting of the Institute was set for Friday, May 2nd, to be held at the Hotel Biltmore, New York City, at 1:00 P. M.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Secretary.

HED:IF.

DEFENDANT'S EXHIBIT No. 290.

AMERICAN DYES INSTITUTE
ROOM 511 320 BROADWAY
NEW YORK

MINUTES OF JOINT MEETING
BOARD OF GOVERNORS
AND
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE
April 8th, 1920.

Following a luncheon at the Arkwright Club, a joint meeting of the Executive Committee and the Board of Governors of the American Dyes Institute

was held in the office of the Treasurer, 320 Broadway, New York City, on Thursday, April 8th, 1920.

The following firms were present and represented as follows:

Atlantic Dyestuff Co.,	Mr. A. C. Burrage, Jr.
The Calco Chemical Co., Inc.,	Mr. F. M. Fargo, Jr.
Chemical Co. of America,	Mr. Chas. Kendall.
E. I. du Pont de Nemours & Co.,	Mr. E. V. Patterson.
Grasselli Chemical Co.,	Dr. J. M. Matthews.
The Heller & Merz Co.,	Mr. August Merz.
Merrimac Chemical Co.,	Mr. S. W. Wilder.
National Aniline & Chemical Co.,	Mr. H. H. Replogle.
Newport Chemical Works, Inc.,	Dr. E. H. Killheffer.

Mr. E. V. Patterson was elected Chairman.

In the absence of Mr. Corwine the Treasurer acted as Secretary.

Mr. Danner announced he had received a 'phone message saying Mr. McCartney of the Monsanto Chemical Works had been unavoidably detained and regretted his inability to be present at the meeting.

The Chairman stated that the meeting had been called pursuant to action at the meeting of the Executive Committee in March and the Board of Governors had been requested to meet with the Executive Committee for the purpose of discussing a possible budget for 1920 and providing the Treasury with funds for current needs.

It was pointed out that at the present time it was not possible to say what would be the probable expenses of the Institute for 1920. It was anticipated that it would be considerably in excess of 1919.

Bills for legal fees for the Washington expenses

have not yet been received, and other activities of the Institute after the legislative work in Washington has been completed have not yet been taken up, although a Committee on Education is now considering a program.

There followed a general discussion and it was decided that in the absence of having a definite budget to propose at this time the meeting would make up a schedule, indicating what percentage of the total budget each member would be asked to assume; it being understood that the amount of the budget would be decided later.

Some of the members expressed the opinion that the proportion each member should be assessed should bear some direct relation to a member's turn over on dyestuff and intermediates either in volume or value, or in any event be based on some definite and scientific method of distribution. All agreed that this was correct, but at this time it seemed to be impracticable to apply such a method owing to some of the members of the Institute being unwilling to disclose their tonnage or sales to either a Committee or Public Accountant. It was therefore thought that the combined judgment of those present would estimate with fair accuracy the relative proportion each member should bear. Thereupon, with this in mind, there was placed opposite the name of each member that figure which those present considered fair and equitable. A great deal of time and consideration was given to this work, and the figures were revised several times.

Below is given the result of their work:—

STATEMENT OF PERCENTAGE OF TOTAL BUDGET TO BE LEVIED AGAINST EACH MEMBER FOR 1920.

(As arrived at in Joint Meeting of Executive Committee and Board of Governors, April 8, 1920.)

Member	*Percentage*
Althouse Chemical Co.,	.004
American Aniline Products Co.,	.02
Atlantic Dyestuff Co.,	.02
Atlas Color Works,	.002
The Ault & Wiborg Co.,	.05
The Barrett Co.,	.025
Butterworth-Judson Corp.,	.02
John Campbell & Co.,	.012
Calco Chemical Co., Inc.,	.04
Certified Chemical Corp.,	.002
Chemical Company of America,	.006
Commonwealth Chemical Co.,	.002
Consolidated Color & Chemical Co.,	.04
Dicks, David Co., Inc.,	.012
The Dow Chemical Co.,	.03
E. I. du Pont de Nemours & Co.,	.205
Dye Products & Chemical Corp.,	.004
Essex Aniline Works,	.02
Grasselli Chemical Co.,	.061
Gaskill Chemical Corp.,	.004
Heller & Merz,	.03
Holland Aniline Co.,	.004
Holliday Kemp Co.,	.008
Hydrocarbon Chemical Co.,	.002
Merrimac Chemical Co.,	.01
Metals Disintegrating Co.,	.002
Monsanto Chemical Co.,	.012
Geo. H. Morrill Co.,	.004
National Aniline & Chemical Co.,	.210
Naugatuck Chemical Co.,	.004
Newport Chemical Works, Inc.,	.08
Peerless Color Co.,	.004
The Sherwin-Williams Co.,	.035
Transatlantic Chemical Co.,	.002
Tower Mfg. Co.,	.006
U. S. Color & Chemical Co.,	.008
	1.000

On Motion the above table was approved and ordered to be reported to the next meeting of the Institute.

In addition the Secretary was instructed to send a copy of this memorandum to each member with a letter of transmittal.

Dr. Matthews then brought up the matter of the Open Price Section of the Institute, and invited a discussion as to the value to the industry of this activity. Speaking for the Grasselli Chemical Co., he stated that his firm did not feel it derived any benefit and therefore no portion of its assessment should be used, toward the expenses of this section. Attention was called to Article 4, Section 4 of the Constitution, wherein it was provided that the expenses of this section were to be assumed by those members who elected to participate. Accordingly as provided in the Constitution, the following Committee of four—

Mr. F. M. Fargo, Jr.,	Dr. J. M. Matthews,
Mr. H. H. Replogle,	Dr. E. H. Killheffer.

was appointed to determine what, if any, expense should be incurred for Open Price work, and to ascertain which of the members would participate.

The Secretary reported that practically no manufacturers were filing any price or production information of any kind, and as shown by the minutes, the Sectional Meetings were not attended.

There followed a discussion as to providing funds to meet current expenses. Consideration was given as to the advisability of increasing the annual dues, and after considerable discussion this was not considered advisable.

On motion of Mr. Kendall, duly seconded, it was unanimously

RESOLVED:—

that a tentative budget of $75,000 be levied, same to be paid in quarterly payments in advance, each member to be assessed as per table of percentages reported above, and if this assessment be not sufficient to meet requirements for special work, an additional assessment shall be made at such time as special funds are required, and such special amount shall be payable on call.

This resolution does not include expenses for the Open Price Section, which will be provided for by special assessment to those members participating in same.

In view of the discussion with reference to the method of apportioning assessments among members, and with a view to establishing a more scientific method for the future, on motion of Mr. Burrage it was

RESOLVED:—

that the President appoint a Committee of three to study and prepare a method of levying assessments which would provide an equitable division of expenses based on a scientific method.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Treasurer.

HED:AM.

DEFENDANT'S EXHIBIT No. 291.

AMERICAN DYES INSTITUTE
ROOM 511 320 BROADWAY

NEW YORK

MINUTES OF MEETING
AMERICAN DYES INSTITUTE
April 9th, 1920.
1:30 P. M.

A regular monthly meeting of the American Dyes

Institute was held at the Hotel Biltmore, New York City, on Friday, April 9th, 1920.

Luncheon was served at 12.30 P. M., after which the meeting was called to order at 1.30 P. M., by Mr. Frank Hemingway, who was unanimously chosen Chairman.

The following members were present and represented as follows:—

American Aniline Products, Inc.,	Mr. Paul Nobbe,
Atlantic Dyestuff Co.,	Mr. A. C. Burrage, Jr.,
The Ault & Wiborg Co.,	(Mr. Wiborg,
	(Mr. R. W. Hilton,
The Barrett Co., Inc.,	(Mr. D. W. Jayne,
	(Mr. R. P. Dunning,
The Calco Chemical Co., Inc.,	(Mr. Berry,
	(Mr. F. M. Fargo, Jr.,
John Campbell & Co.,	Mr. E. J. Quinn,
Chemical Co. of America,	(Mr. C. Kendall,
	(Dr. S. Iserman,
E. I. duPont deNemours & Co.,	(Mr. Stevenson,
	(Mr. Kendall,
	(Mr. Cesare Protto,
	(Dr. A. D. Chambers,
	(Mr. E. V. Patterson,
Dye Products & Chemical Co.,	(Mr. L. M. Loewenthal,
	(Mr. S. Simon,
Essex Aniline Works, Inc.	Mr. Phineas Kent, Jr.,
Grasselli Chemical Co.,	Dr. J. M. Matthews,
The Heller & Merz Co.,	(Mr. A. Merz,
	(Mr. Robertson,
Merrimac Chemical Co.,	Mr. S. W. Wilder,
Metals Disintegrating Co.,	Mr. S. G. Schatzberg,
Monsanto Chemical Works,	Mr. F. L. McCartney,

Newport Chemical Works, Inc.,	Mr. J. R. M. Klotz,
Peerless Color Co.,	(Dr. R. W. Cornelison,
The Sherwin-Williams Co.,	(Mr. A. L. Benkert, (Mr. Frank Hemingway, (Mr. R. B. Brown, (Mr. M. Steudel,
Tower Mfg. Co.,	Mr. D. H. Jonas,
Transatlantic Chemical Corp.,	Mr. W. M. Stevenson,

Counsel, Mr. Arthur J. Eddy, and Treasurer, Mr. H. E. Danner, also attended.

In the absence of Mr. Corwine, the Treasurer, Mr. H. E. Danner, acted as Secretary.

Following the "calling of the roll," Mr. Klotz called attention to the fact that a number of member firms were not represented at the meeting, and it was much regretted, as the monthly meetings were called for the industry and matters of interest to all are discussed, and in the interest of better attendance in the future he offered the following motion, which was unanimously adopted—

RESOLVED

that the Secretary be directed to record in all future minutes a list of the members who are not represented at the meeting and in the case of a member not being represented for a second and third consecutive time, to make special note of same in the minutes.

In acordance with the above resolution the following member firms are recorded as not being represented:

Althouse Chemical Co.,
Atlas Color Works, Inc.,
Butterworth-Judson Corp.,

Certified Chemical Corp.,
Commonwealth Chemical Corp.,
Consolidated Color & Chemical Co.,
Dicks, David Co., Inc.,
Dow Chemical Co.,
Gaskill Chemical Corp.,
Holland Aniline Co.,
Holliday-Kemp Co., Inc.,
Hydrocarbon Chemical Products, Inc.,
Geo. H. Morrill Co.,
National Aniline & Chemical Co.,
Naugatuck Chemical Co.,
Organic Salt & Acid Co.,
United States Color & Chemical Co.,

The Treasurer reported as follows:—

TREASURER'S REPORT

Balance, March 1, 1920	$3,160.07
Received during March	5,014.04
	8,174.11
Expenditures during March	4,199.58
Balance, April 1, 1920	$3,974.53

ACCOUNTS PAYABLE—	$7,500.00—
ACCOUNTS RECEIVABLE	$18,591.36

* * * * * * * * * * *

REPORT OF EXECUTIVE COMMITTEE

The Treasurer reporting for the Executive Committe stated that:—

1.—The Committee had met on the previous day. The resignation of the MONROE COLOR & CHEMICAL CO. of Quincy, Ill., had been received at a previous meeting and had been referred to Dr. J. M. Matthews, who had communicated with the Monroe

Color & Chemical Co. in the hope that this firm might reconsider its resignation. He had been advised that the resignation should stand, and therefore the Executive Committee recommends that the resignation be accepted.

On motion it was resolved that the resignation of the Monroe Color & Chemical Co. be accepted with regret.

2.—As per resolution adopted at the meeting of the Institute in March, the Executive Committee had appointed the following as a permanent Committee on "Sanitization and Safety"—

A representative of The Barrett Co., Inc., Chairman,

A representative of The Calco Chemical Co.,

A representative of National Aniline & Chemical Co.,

The first work of this Committee would be to co-operate with the National Code Committee of the Department of Labor and Industry in Pennsylvania in the matter of preparing a National Code on Nitro and Amido Compounds, and accordingly the executive Committee requested the firms named on this important Committee to select such party from their own organization as was best fitted to represent the Institute in this work.

The above completed the report of the Executive Committee, and on motion this report was accepted and approved.

REPORT OF JOINT MEETING OF EXECUTIVE COMMITTEE AND BOARD OF GOVERNORS.

The Treasurer read the minutes of this meeting, a copy of which is given below and forms part of these minutes:—

MINUTES OF JOINT MEETING
BOARD OF GOVERNORS
and
EXECUTIVE COMMITTEE
AMERICAN DYES INSTITUTE
April 8th, 1920.

Following a luncheon at the Arkwright Club, a joint meeting of the Executive Committee and the Board of Governors of the American Dyes Institute was held in the office of the Treasurer, 320 Broadway, New York City, on Thursday, April 8th, 1920.

The following firms were present and represented as follows:

Atlantic Dyestuff Co.,	Mr. A. C. Burrage, Jr.,
The Calco Chemical Co.,	Mr. F. M. Fargo, Jr.,
Chemical Co. of America,	Mr. Chas. Kendall,
E. I. duPont deNemours & Co.,	Mr. E. V. Patterson
Grasselli Chemical Co.,	Dr. J. M. Matthews,
The Heller & Merz Co.,	Mr. August Merz,
Merrimac Chemical Co.,	Mr. S. W. Wilder,
National Aniline & Chem. Co.,	Mr. H. H. Replogle.
Newport Chemical Works, Inc.,	Dr. E. H. Kilheffer,

Mr. E. V. Patterson was elected Chairman.

In the absence of Mr. Corwine the Treasurer acted as Secretary.

Mr. Danner announced he had received a 'phone message saying that Mr. McCartney of the Monsanto Chemical Works had been unavoidably detained and regretted his inability to be present at the meeting.

The Chairman stated that the meeting had been called pursuant to action at the meeting of the Exe-

cutive Committee in March and the Board of Governors had been requested to meet with the Executive Committee for the purpose of discussing a possible budget for 1920 and providing the Treasury with funds for current needs.

It was pointed out that at the present time it was not possible to say what would be the probable expenses of the Institute for 1920. It was anticipated that it would be considerably in excess of 1919.

Bills for legal fees for the Washington expenses have not yet been received, and other activities of the Institute after the legislative work in Washington has been completed have not yet been taken up, although a Committee on Education is now considering a program.

There followed a general discussion and it was decided that in the absence of having a definite budget to propose at this time, the meeting would make up a schedule indicating what percentage of the total budget each member would be asked to assume; it being understood that the amount of the budget would be decided later.

Some of the members expressed the opinion that the proportion each member should be assessed should bear some direct relation to a member's turnover on dyestuff and intermediates either in volume or value, or in any event be based on some definite and scientific method of distribution. All agreed that this was correct, but at this time it seemed to be impracticable to apply such a method owing to some of the members of the Institute being unwilling to disclose their tonnage or sales to either a Committee or Public Accountant. It was therefore thought that the combined judgment of those present would estimate with fair accuracy the relative proportion each member should bear. Thereupon, with this in mind, there was placed opposite the name of each member that figure which

those present considered fair and equitable. A great deal of time and consideration was given to this work, and the figures were revised several times.

Below is given the result of their work:——

STATEMENT OF PERCENTAGE OF TOTAL BUDGET TO BE LEVIED AGAINST EACH MEMBER FOR 1920.

(As arrived at in Joint Meeting of Executive Committee and Board of Governors, April 8th, 1920.)

Member	*Percentage*
Althouse Chemical Co.,	.004
American Aniline Products Co.,	.02
Atlantic Dyestuff Co.,	.02
Atlas Color Works,	.002
The Ault & Wiborg Co.,	.05
The Barrett Co.,	.025
Butterworth-Judson Corp.,	.02
John Campbell & Co.,	.012
Calco Chemical Co., Inc.,	.04
Certified Chemical Corp.,	.002
Chemical Company of America,	.006
Commonwealth Chemical Co.,	.002
Consolidated Color & Chemical Co.,	.04
Dicks, David Co., Inc.,	.012
The Dow Chemical Co.,	.03
E. I. duPont deNemours & Co.,	.205
Dye Products & Chemical Corp.,	.004
Essex Aniline Works,	.02
Grasselli Chemical Co.,	.061
Gaskill Chemical Corp.,	.004
The Heller & Merz Co.,	.03
Holland Aniline Co.,	.004
Holliday Kemp Co.,	.008
Hydrocarbon Chemical Products,	.002
Merrimac Chemical Co.,	.01
Metals Disintegrating Co.,	.002
Monsanto Chemical Co.,	.012

Member	*Percentage*
Geo. H. Morrill Co.,	.004
National Aniline & Chemical Co.,	.210
Naugatuck Chemical Co.,	.004
Newport Chemical Works, Inc.,	.08
Peerless Color Co.,	.004
The Sherwin-Williams Co.,	.035
Transatlantic Chemical Co.,	.002
Tower Mfg. Co.,	.006
U. S. Color & Chemical Co.,	.008
	1.000

On motion the above table was approved and ordered to be reported to the next meeting of the Institute.

In addition the Secretary was instructed to send a copy of this memorandum to each member with a letter of transmittal.

Dr. Matthews then brought up the matter of the Open Price Section of the Institute, and invited a discussion as to the value to the industry of this activity. Speaking for the Grasselli Chemical Co., he stated that his firm did not feel it derived any benefit and therefore no portion of its assessments should be used toward the expenses of this Section. Attention was called to Article 4, Section 4, of the Constitution, wherein it was provided that the expenses of this Section were to be assumed by those members who elected to participate. Accordingly as provided in the Constitution, the following Committee of four——

Mr. F. M. Fargo, Jr.,
Mr. H. H. Replogle,
Dr. J. M. Matthews,
Dr. E. H. Killheffer,

was appointed to determine what, if any, expense should be incurred for Open Price Work, and to ascertain which of the members would participate.

The Secretary reported that practically no manufacturers were filing any price or production information of any kind, and as shown by the minutes, the Sectional Meetings were not attended.

There followed a discussion as to providing funds to meet current expenses. Consideration was given as to the advisability of increasing the annual dues, and after considerable discussion this was not considered advisable.

On motion of Mr. Kendall, duly seconded, it was unanimously

RESOLVED

that a tentative budget of $75,000. be levied, same to be paid in quarterly payments in advance, each member to be assessed as per table of percentages reported above, and if this assessment be not sufficient to meet requirements for special work, an additional assessment shall be made at such time as special funds are required, and such special amount shall be payable on call.

This resolution does not include expenses for the Open Price Section, which will be provided for by special assessment to those members participating in same.

In view of the discussion with reference to the method of apportioning assessments among members, and with a view to establishing a more scientific method for the future, on motion of Mr. Burrage it was

RESOLVED

that the President appoint a Committee of three to study and prepare a method of levying assessments which would provide an equitable division of expenses based on a scientific method.

There being no further business, on motion the meeting adjourned.

There followed a general discussion and the members expressed a hesitancy to approve a rate of allocation for an indeterminate amount of total assessment. Others expressed the opinion that in their own case they were set down for a percentage which in their opinion was not proportionate with their conception of some of their competitors' business. It was readily agreed that the rates established did not represent the result of any scientific method of distribution, but it was explained that this was the combined effort of the Executive Committee and the Board of Governors to be fair to all.

It was pointed out that provision had been made for a Committee to prepare and recommend for the future a plan of allocation of expenses which would be based on some scientific method.

On motion of Mr. Klotz seconded by Mr. Jayne, it was unanimously

RESOLVED

that up to the extent of levying an assessment of $75,000 the action of the Committee be approved as read, and it was further

RESOLVED

that if any further assessment be made, the allocation of same shall be submitted to the Institute for approval.

The Chairman then announced that Dr. Herty, who had just arrived, had a message to communicate and if there was no objection, he would set aside the regular order of business and request Dr. Herty to speak to the members. This was agreeable to all present, and Dr. Herty then stated that he had come direct to the meeting after having been told by a large consumer and one who had been very much in

sympathy with an American Dye industry and who desired to see a self-contained American Dye industry established, that another large consumer who had likewise given his support to the present legislation had that morning called at his office and complained that the dye manufacturers were engaged in profiteering, and he therefore expressed the thought that the present proposed legislation should be defeated.

Dr. Herty stated that he placed this before the members of the Dyes Institute knowing that they would be most anxious to controvert such a feeling among the consumers.

Dr. Herty was unable to remain through any discussion, as he was obliged to leave town and he stated he knew nothing of the merits of the case and simply placed the matter before the Institute for such action as they might desire to take.

There followed a general discussion and it was the opinion of those present that this was unfortunate, in view of the fact that such statements were not matters of fact. Some of the members stated that while it was true some particular dyes had been advanced rapidly, it was due to the extreme shortage of raw materials and the extremely high prices for same, For instance, Methylene Blue was cited as a particular case, and Mr. Fargo expressed the opinion that until recently Methylene Blue had been sold below cost, and he thought that with the present prices for raw materials, such as Methyl Alcohol, which is now being exported, it would be impossible to maintain even the present price for Methylene Blue.

On the other hand, it was pointed out that a number of the other dyestuffs had reduced materially in price since the 1st of January.

On motion of Mr. Kendall, seconded by Mr. Fargo, it was unanimously

RESOLVED

that the Executive Committee should meet immediately following this meeting and discuss the subject with a view to providing the Legislative Committee in Washington with up to date facts covering the situation as regards prices. It was further unanimously

RESOLVED

that inasmuch as this matter likewise affected the manufacturers of intermediates and crudes, that representatives from these manufacturers be invited to attend any meeting which the Executive Committee might decide upon.

REPORT OF THE COMMITTEE ON EXPOSITION

Inasmuch as Dr. Killheffer, Chairman of this Committe, was not present there was no report, although the Treasurer stated he understood Dr. Killheffer had the matter in charge and would shortly be able to make a report to the Institute, perhaps through a communication.

REPORT OF COST COMMITTEE

Mr. Danner, reporting for this Committee, stated that the Committee had submitted its typewritten report and that 500 copies of same had been ordered printed, and it was hoped that these copies would be available within a short while.

REPORT OF COMMITTEE ON EDUCATION

Mr. E. V. Paterson reported that the Committee was not prepared to make a final report, but that he and Mr. Merz had had interviews with several of the large moving picture firms, and were considering ways and means of producing an educational film devoted

to the dyes industry. He stated a full report would be made at a later date, and accordingly Mr. Patterson's report was accepted as one of progress.

Mr. Loewenthal referred to the meeting held on March 7, 1919, at which meeting the Trade Committee had reported with reference to uniform terms of discount. He stated that at that time the duPont Co. had reported their terms as 1%—10 days, but that he had recently been advised by his customers that the discount of the duPont Co. was 2%—10 days

It was pointed out that the March, 1919 meeting there was no agreement that the members would maintain any stated terms. In fact at that time the members were asked to file with the Secretary what their actual terms were, and if they varied from these terms to likewise file this information. This had been done by only a very few members, and Mr. Danner reported that in the case of the duPont Co. all reports of their orders contracts or quotations, giving full information as to prices, terms, etc. had been filed.

Mr. Patterson replied to Mr. Loewenthal and stated that they had been obliged to meet competition in several instances and quote terms of 2%—10 days, and inasmuch as his company treated all customers on precisely the same basis they then made their terms to every customer in their Dyestuff Department 2%—10 days.

There being no further business, on motion the meeting adjourned.

(Sgd.) H. E. DANNER,
Treasurer.

HED/AM

DEFENDANT'S EXHIBIT No. 292.

STATEMENT OF MR. HARRY E. DANNER, 320 BROADWAY, NEW YORK CITY, TREASURER OF AMERICAN DYES INSTITUTE, AND FORMERLY SECRETARY OF THE OPEN-PRICE SECTION BEFORE SUB-COMMITTEE OF COMMITTEE ON JUDICIARY, U. S. SENATE, ON SENATE RESOLUTION No. 77.

Mr. DANNER. I will state, Mr. Chairman, that I am at the present time treasurer and up until the time the activities of the open-price section of the American Dyes Institute were suspended I was the secretary of that section.

Obviously, Mr. Chairman, I can only speak of those activities of the institute with which I am individually familiar. I am not familiar with the details of the dye industry or the members' personal affairs.

Senator STERLING. You are not connected with any dye manufacturing company?

Mr. DANNER. I am not. I am entirely independent of them.

Senator STERLING. You may proceed with your statement.

Mr. DANNER. That part of the activities of the American Dyes Institute which provided for the operation of an open-price section was adopted in April, 1918. It provided:

(1) For the collection and interchange of price information in respect to current orders, contracts, and quotations.

(2) For a scientific system of cost accounting. There was never any complete plan devised for such a system which the institute adopted or urged upon its members. There was one pamphlet which set forth a number of the general principles of sound account-

ing in the chemical industry and which was distributed to the institute members.

(3) For a weekly report of production and work ahead. This part of the plan was never put into operation. Participation in the reporting plan was optional.

Senator STERLING. Will you permit an interruption just there?

Mr. DANNER. Certainly.

Senator STERLING. Of whom was this open-price section, as you term it, composed?

Mr. DANNER. Of American manufacturers engaged in the production of American dyes. I will set forth that a little further on in my statement, Mr. Chairman.

There was one pamphlet which set forth a number of general principles of sound accounting in the chemical industry, and it was distributed to the institute members.

Senator STERLING. The institute members, as I understand it, was of various dye industries?

Mr. DANNER. Yes. Mr. Chairman, I will now quote an extract from the report of the organization committee:

"It should be made plain to prospective members who are not familiar with the open-price plan that they can join the proposed institute as members in good standing and file nothing if they see fit, or they can file as little or as much as they please and they can cease filing any time they please. There is nothing compulsory in the organization and no penalties of any kind connected with it. The only requirement is that if a member does file any reports or statistics whatever he files must be true and accurate."

It was provided that the interchange of price information should be made by the secretary among only those members who reported in respect to the same

customer on the same or practically the same dye or intermediate.

The number of such exchanges which were made during the period from April, 1918, to May, 1919, follows:

1918: April, none; May, none; June, 3; July, 5; August, 2; September, 1; October, 4; November, 3; December, 5. 1919: January, 6; February, 30; March, 21; April, 32; May, 63. Total, 175.

The above total of 175 exchanges resulted from the members having filed with the secretary during that same period a total of something over 14,000 reports.

It might be stated at this point that the very limited number of exchanges which might have been of any benefit to those members who received the information thus exchanged was due to the limited number of members who participated in the open-price section of the institute and filed a record of their contracts, orders, and quotations. It was further due to the fact that those members who did participate did not all file all their records on all their products and to the fact that the reporting plan limited the secretary to making exchanges only among those members who reported in respect to the same customer on the same or practically the same product. It is conceivable that had all the members of the Institute participated in the open-price plan, and had filed all their reports covering all their quotations, orders, or contracts on each and every one of their products, the total number of reports filed and exchanges made covering a period of more than one year as set forth above might have been exceeded in any one day.

At the outset the institute had 16 members, of which number 5 (The Calco Chemical Co., E. I. du Pont de Nemours & Co., Marden, Orth & Hastings Corporation, Sherwin-Williams Co., and United Piece Dye Works) reported their orders, contracts, and

quotations, some on all the products they manufactured and others on only a limited number of their products.

The greatest number who from time to time, but not at any one time, participated in the open-price plan was 12 members, and the total number of reports which they filed during the year and a half of the existence of the open-price plan was as follows:

Marden, Orth & Hastings Corporation (later the Calco Chemical Co.)	7,242
Sherwin-Williams Co.	1,032
Hydro Carbon Chemical Products Co.	28
E. I. du Pont de Nemours & Co.	3,818
Frank Hemingway & Co.	10
Dicks David & Co.	1,573
Dow Chemical Co.	447
Certified Chemical Corporation	2
National Aniline Co.	97
Rector Chemical Co.	3
Naugatuck Chemical Co.	9
United Piece Dye Works	115
Total	14,376

The Calco Chemical Co. and the United Piece Dye Works, during the time that the latter company was manufacturing dyes were the only members who claimed to have reported a complete record of all their quotations, orders, and contracts on all the products which they manufactured.

Senator STERLING. What companies were those?

Mr. DANNER. The Calco Chemical Co. and the United Piece Dye Works.

On the contrary, for example, the Sherwin-Williams Co. reported only a limited number of products, while the National Aniline Co. reported but 97 transactions covering some intermediates only.

Efforts to have members report production statistics met with no response and even a suggestion for a report on the percentage of plant capacity operated by each company was not considered practicable because of the impossibility of members estimating their own normal average capacity in respect to different kinds and types of products. Therefore there were never any production statistics collected or distributed.

On or about June, 1919, or within a little more than a year after the inception of the plan, because so many members of the institute did not participate in the open-price section, there was considerable objection raised to devoting any of the time of the regular institute meetings to any reports of the secretary of that section. In view of the general lack of active reporting by members of the open-price section, due to some members excepting certain products, from the reports and other members reporting only intermittently, because, as they asserted, of the general complex nature of the dyestuff industry, it was concluded to invite members interested in particular dyes or intermediates to file their reports for those products only. Accordingly, thereafter members interested in certain products—selected because it was thought it would be more simple to file price reports, as they were comparatively standardized products—were asked to meet in groups as follows: (a) Aniline oil; (b) h. acid; (c) beta naphthol; (d) sulphur colors.

Meetings of those respective groups were held as follows:

(a) Aniline oil: July, August, September, December, 1919; March and April, 1920. During the other months there were no meetings because no one attended, although meetings were regularly called.

(b) H. acid: July, August, September, November, December, 1919; April, 1920. As in the case of

aniline oil, no meetings were held during the other months because of no attendance.

(c) Beta naphthol: July, August, September, October, 1919. No meetings were held during the other months because of no attendance.

(d) Sulphur colors: October and November, 1919; January, 1920. No meetings were held during the other months because of no attendance.

All the meetings of these groups were poorly attended and members did not file complete reports. By far the largest number of reports were filed by Marden, Orth & Hastings Corporation or the Calco Chemical Co. The next largest number was filed by the Sherwin-Williams Co. In some months there were no reports filed by those companies, and in other months the number ran as high as 19.

Mr. CHOATE. Did you say the meetings were "fully" attended, or what did you say?

Mr. DANNER. I said they were poorly attended.

During the 10 months these group meetings were being tried out as a modification of the original reporting plan——

Senator STERLING. That is, the original reporting plan of the open-price section?

Mr. DANNER. Yes; you see the original plan embraced all the products of the members. They were invited to report on everything that they produced; but it failed, and they did not do it. Then we endeavored to hold these group meetings, covering certain standardized products, thinking it would be a more simple thing to do. We called that the modified plan. The original and broader field was entirely suspended.

Senator STERLING. You may proceed with your statement.

Mr. DANNER. During the 10 months these group meetings were being tried out as a modification of the original reporting plan, which plan had in fact

failed for want of support among the members, there were in the aniline-oil group—the most active one—a total of 121 reports filed, as follows:

1919: July 44; August, 39; September, 20; October, 15; November, 1; December, 2. 1920: January, none; February, none; March, none; April, none. Total, 121.

There were probably not over 10 or 15 exchange reports made between members quoting or selling the same customer. Exchanges were made on the same plan, I might add, that the original plan provided.

In the sulphur-colors group members had not undertaken to file any price reports. An effort was made to endeavor to ascertain the total average normal production of sulphur colors, but no success was attained.

The foregoing statement also applies to the h. acid group.

At none of the group meetings was there any general discussion of prices or the reports. This fact induced counsel in April, 1920, to cause the following to be written into the record of the meeting of the aniline-oil group held April 9, 1920:

"While the section has been called an open-price section, no open-price reports have ever been filed and prices have never been discussed. Under the circumstances he thought it in order for those present and others to consider whether in the future they wished to hold sectional meetings for any purpose and any way not to refer to them as open-price sections or meetings so long as no open-price work was done and no price information filed or exchanged or discussed."

A similar record was made in the minutes of the meeting of the h. acid group held on the same day.

Mr. CHOATE. Who was that counsel?

Mr. DANNER. Mr. Arthur J. Eddy, counsel for the open-price section of the institute.

Repeating, I will say a similar record was made in the minutes of the meeting of the h. acid group held on the same day. There were not any members present at the meeting of the beta naphthol group called for the same day, and there was only one member present at the meeting of the sulphur-colors group also called for the same day.

At a joint meeting of the executive committee and the board of governors of the American Dyes Institute, held April 8, 1920, a special committee was appointed to consider the question of continuing an open-price section in the institute. That committee consisted of F. M. Fargo, of the Calco Chemical Co.; H. H. Replogle, of the National Aniline & Chemical Co.; Dr. J. Merritt Matthews, of the Grasselli Chemical Co.; and Dr. E. H. Killheffer, of the Newport Chemical Works.

At a meeting of the institute itself held the next day, April 9, 1920, the secretary of the open-price section reported as follows:

"The secretary reported that practically no manufacturers were filing any price or production information of any kind and, as shown by the minutes, the sectional meetings were not attended."

[Minutes of meeting of American Dyes Institute, April 9, 1920.]

At a meeting of the institute held June 11, 1920, the special committee appointed April 8 reported as follows:

Report of special committee appointed at joint meeting of the board of governors and executive committee to report on open-price plan:

GENTLEMEN: Your committee has met and discussed the question of whether the open-price section of the institute should be continued, or just what action should be taken with respect to same. At this meeting we had before us advice from our counsel,

Mr. Arthur J. Eddy, to the effect that in his opinion it would never be practicable for the American Dyes Institute as such to follow the open-price plan. That it would be much better for particular groups, manufacturing the same or similar products, to organize themselves entirely independently of the institute. Mr. Eddy has, therefore, recommended that the open-price section be abandoned, and that, if we follow his advice, that his services be dispensed with.

Your committee, having carefully considered this, believes that advice of our counsel as above should be followed, and so recommends to the institute.

Respectfully submitted.

F. M. FARGO, Jr.
E. H. KILLHEFFER.
H. H. REPLOGLE.
J. M. MATTHEWS

Senator STERLING. Now, how long had the open-price section been in existence at that time?

Mr. DANNER. Well, this was in June, 1920, and the open-price section was organized in April, 1918.

Senator STERLING. Was Mr. Eddy counsel for the open-price section of the institute or was he counsel for the institute?

Mr. DANNER. He was counsel for the open-price section of the institute.

Senator STERLING. Why the need of special counsel for the open-price section of the American Dyes Institute?

Mr. DANNER. Well I think all open-price work has been handled that way. Mr. Chairman: that it has been customary to employ counsel to guard you in discussions and so on in all open-price work.

Dr. S. ISERMANN. Mr. Chairman perhaps I can give you some information on that.

Senator STERLING. What is the name?

Doctor ISERMANN. My name is S. Isermann, of the Chemical Co. of America. I am a member of the American Dyes Institute, and was a member at the time when this open-price section was in force, or rather was being used by some of the members. The reason that there was counsel for the open-price section was because those who did not believe in the open-price work, or those who did not participate in it, felt that they did not want to pay counsel for work that probably would benefit somebody else. Does that clarify your mind on that question?

Senator STERLING. Well partly.

Mr. DANNER. That was not the line you were addressing your thought to.

Senator STERLING. Not quite.

Mr. DANNER. Did I answer your question?

Senator STERLING. You may proceed with your statement.

Mr. DANNER. Following the presentation of the report above quoted, the minutes of the meeting which was held June 11, 1920, read as follows:

"The institute indorsed the action which had been taken by the executive committee in approving and accepting the report.

"As it was apparent that it would be necessary to change the by-laws because of the abolition of the open-price section, the secretary was instructed to note the changes which would be required and to take the necessary steps to have them adopted."

At the meeting of the executive committee of the American Dyes Institute held July 15, 1920, the secretary reported that Mr. A. J. Eddy had been paid his fee; that he had acknowledged receipt thereof; and that therefore the account was closed.

Thus Mr. Eddy ceased to be counsel for the open-price section of the American Dyes Institute or for the institute itself, and there was no longer any open-

price work done or attempted to be done by the institute, or by any group or groups of the members.

Senator STERLING. Did Mr. Eddy have any further connection with the American Dyes Institute after the abolition of the open-price section?

Mr. DANNER. In no way whatever.

Senator STERLING. He is an attorney in New York?

Mr. DANNER. Mr. Eddy is deceased now. He died a month or two following his resignation. But perhaps I did not answer your question directly, and I would say that his offices were in Chicago.

Senator STERLING. You may continue your statement.

Mr. DANNER. Thereafter the secretary, Mr. W. R. Corwine, and the treasurer, Mr. H. E. Danner, prepared some tentative drafts of the changes in the constitution and by-laws incident to the abolition of the open-price section, and they were to be submitted to Judge J. Harry Covington, of counsel for the institute. In the meantime, however, with no one interested in the matter and with the work of the institute primarily that of preparing and presenting a case for protection of the industry, nothing was done to put the changes into any final form; that is, changes in the by-laws.

To summarize, therefore, the greatest number of institute members who ever did participate in the open-price plan was 12, and those 12 did not report at any one period of time. The greatest number who did report at any one period of time was 6 or 7, and that at a time when the total membership of the institute was approximately 40.

When the open-price section was abandoned in June, 1920, there were 34 members of the institute, with only 2 members actively reporting price information, namely, the Calco Chemical Co. and the Sher-

win-Williams Co., all the other members having some time before ceased to file.

In the absence of any definite statistics of the gross production of each member of the institute so as to form an estimate of the percentage of the production represented by those participating in the open-price plan it is difficult to make any positive statement based on actual figures, but when it is considered that in only two instances was it claimed by members —the Calco Chemical Co. and United Piece Dye Works, while that company was making dyes—that all reports for all products were filed; that in the case of the two larger companies the Du Pont Co. did not report on intermediates and the National Aniline & Chemical Co. did not report on dyes and filed only 97 reports on a few intermediates, and, further, that out of approximately 14,000 reports filed there were less than 200 reports interchanged—it is self-evident that the percentage of the industry which was included in the open-price plan was inconsiderable.

There is a printed copy of the constitution and by-laws of the American Dyes Institute already in the record, I understand.

Senator STERLING. Mr. Danner, what was the purpose of the organization of the American Dyes Institute—that is the official name, is it?

Mr. DANNER. Yes, sir. It was a trade organization, Mr. Chairman. Originally the American Dyes Institute was organized to operate an open-price plan: that was the original conception of the American Dyes Institute under that name.

Senator STERLING. It was incorporated?

Mr. DANNER. No, sir; it was never incorporated.

Senator STERLING. Just a voluntary organization?

Mr. DANNER. Yes, sir.

Senator STERLING. Were any profits derived by the members of the Institute?

Mr. DANNER. No profits inured to any member of the institute. There was a paid secretary, for instance.

Senator STERLING. On whose suggestion was the open-piece section organized?

Mr. DANNER. Well, I will have to go back and think for a while. I do not know just who conceived the idea of organizing an open-price section. Anyhow, some of those engaged in the dye industry became acquainted with Mr. Arthur J. Eddy, who was counsel for several open-price organizations, and they became interested in the subject.

Senator STERLING. What do you mean by "open-price organizations"—outside of the American Dyes Institute or outside of this section?

Mr. DANNER. Mr. Eddy was a lawyer, and he had under his direction a number of open-price associations or sections in different industries. He was very well known as counsel for such organizations, and some members—though I am afraid I can not say who, because at that time I was not in it—but some of those engaged in the dye industry met Mr. Eddy and concluded to organize some institute having an open-price plan provided.

Senator STERLING. I understod you to say that other industries had their associations analogous to the American Dyes Institute.

Mr. DANNER. Yes, sir.

Senator STERLING. And they also had their open-price sections?

Mr. DANNER. Yes, sir.

Senator STERLING. What was the purpose of the open-price section?

Mr. DANNER. The primary purpose of the open-price section is to permit those engaged in the industry to conduct their business with full knowledge of all the facts and factors in that industry.

Senator STERLING. And through the open-price section one industry is given knowledge of the business and prices as fixed by other industries?

Mr. DANNER. Not by other industries but right within their own industry.

Senator STERLING. I meant within their own industry; all other companies in the same industry.

Mr. DANNER. Yes, sir; in the same industry.

Senator STERLING. When these various companies, who were members of the open-price section to begin with, failed to make reports, or made only partial reports, what, if anything, was done by Mr. Eddy, counsel, or the American Dyes Institute in regard to it?

Mr. DANNER. There were no penalties of any sort or kind. A man reported when and as he saw fit. When he reported he received information in exchange; if he did not report, he received no information in exchange.

Senator STERLING. As those reports failed to come in, or as they were only partial reports, the inference would be that the members thought they derived no benefit from them; is that it?

Mr. DANNER. Yes.

Senator STERLING. What is your opinion in regard to that? If the members had reported as originally contemplated they would—or else the open-price section would not have been organized—what, if any, benefits would they have derived?

Mr. DANNER. I think they would have had some benefits. I think they would have been able to conduct their business in full light of all the facts in the industry.

Senator STERLING. Is it to be supposed that their failure to report, or to participate in the open-price section in the meetings of that section, or to make reports to that section, meant that they were thereby

gaining some advantage in keeping concealed prices that they had fixed?

Mr. DANNER. Well, Mr. Chairman, that is pretty hard to answer. I do not know just how the minds of the individual members worked. But I think in the dye industry men were not prepared, were not so situated as to give us information about their own individual business. It was somewhat revolutionary to them, to the members of the American Dyes Institute, and it just simply did not take with them; that is all; it did not operate.

Senator STERLING. Would you think that the purpose of the open-price section itself was somewhat antagonistic to the general business idea, to begin with, that idea being for each man to keep his own business to himself, and the price he charges to himself, rather than to have it known to his competitors?

Mr. DANNER. Yes; that is rather true. It was revolutionary to them. In an open-price section all buyers and sellers alike know the facts. It prevents misunderstandings, and misconceptions and untrue statements, and so on.

Senator STERLING. What do you think is the effect of the abandonment of the open-price section upon the dye industry as a whole?

Mr. DANNER. I think it had no effect because the open-price section had had no effect upon the industry as a matter of fact. Speaking of the American Dyes Institute, it just did not work. It did not function,

* * *

Senator STERLING. What was the largest membership at any one time in the institute?

Mr. DANNER. The entire institute, I think, was composed of 40 members as the largest number at any one time. The membership came and went, you know.

Senator STERLING. And from how many did the open-price section receive reports?

Mr. DANNER. The largest number, I think, was 12, as my statement shows. But at no time did they all report at one and the same time, all of them participating at one and the same time; a man would report and then he would drop out. He would try it for a while and think he did not get sufficient information in return, and he would simply fail to continue reporting.

Senator STERLING. You say you had counsel for the open-price section?

Mr. DANNER. Yes, sir.

Senator STERLING. How was he paid?

Mr. DANNER: He was paid an annual retainer.

Senator STERLING. By whom?

Mr. DANNER. By the American Dyes Institute.

Senator STERLING. What was that retainer?

Mr. DANNER. $10,000 a year, I think.

Senator STERLING. He made a very good fee out of something that did not serve any particularly beneficial purpose, did he not?

(Witness simply smiled.)

Senator STERLING. And he was attorney for other like sections in other associations?

Mr. DANNER. Yes.

Senator STERLING. He was the promoter of open-price sections in various associations, was he?

Mr. DANNER. Well, I do not know that I would call him a promoter. The fact is that he was the one who conceived the idea of reporting all business deals in the open.

Senator STERLING. Was it not the purpose really of the open-price section, Mr. Danner, to regulate or stabilize prices in the dye industry?

Mr. DANNER. No; I think I can answer that honestly and say that that was not the purpose; that it was not the purpose to regulate prices at any rate. I am frank to say that I think an open-price plan,

properly operating, has a tendency to stabilize prices and prevent violent fluctuations.

Senator STERLING. I think that is all I wish to ask.

Mr. CHOATE. I would like to suggest two questions to be asked—one as to whether or not all those reports were not furnished immediately to the Federal Trade Commission.

Mr. DANNER. Yes; they were sent to the Federal Trade Commission——

Mr. CHOATE (interposing). And the other question was as to whether one of the chief purposes——

Mr. DANNER (continuing). Just let me finish my answer. The minutes of the meetings were all sent to the Federal Trade Commission. The individual reports submitted by the members, they were filed with me, and they were locked reports, and never went out of my office until the man unlocked it or had business dealings with some party. He only unlocked it with those having business with the same party. No reports ever went out of my office. Those records were never available to any member of the institute, either officer or otherwise.

Senator STERLING. Then your reports did not go to the Federal Trade Commission?

Mr. DANNER. No, sir; the reports of individual transactions did not go to the Federal Trade Commission. But the minutes of meetings and so on did go to the Federal Trade Commission.

Senator STERLING. Would the minutes of the open-price section contain the report made by any company belonging to the institute?

Mr. DANNER. Not the details, Mr. Chairman. The secretary made a report each month as to the number of reports he had received, and from whom he had received them. For instance, that he had received 12 reports from the Sherwin-Williams Co., and that he

had made four or five or six exchanges that month, whatever the number might be.

Senator STERLING. Were they ever called for by the Federal Trade Commission?

Mr. DANNER. They were sent automatically to the Federal Trade Commission—well now, do you mean the individual reports?

Senator STERLING. Yes.

Mr. DANNER. Oh, no; they were not sent to the Federal Trade Commission.

Senator STERLING. But the minutes were sent to the Federal Trade Commission?

Mr. DANNER. The minutes of the meetings were sent automatically to the Federal Trade Commission.

Mr. CHOATE. Another question I want to ask, with the chairman's permission——

Senator STERLING (interposing). Any gentleman present may ask questions if he desires.

Mr. CHOATE. One of the chief purposes of the plan was, was it not, to relieve manufacturers from having to rely upon their customers for information as to what competitors were charging?

Mr. DANNER. Oh, yes; of course, that was the prime purpose anyway. But I did not think you wanted me to go into a very elaborate discussion of the open-price plan as such. I did not think that was the purpose of this discussion. I brought out that, as it was conceived by Mr. Eddy, it was to promote frankness and openness; to have everything laid on the table to buyer and seller alike.

Senator STERLING. You say these reports were made under oath?

Mr. DANNER. No; they were not made to me under oath. The way it was operated, Mr. Chairman, was that if you took an order from John Jones, when you confirmed that order to your customer a carbon copy was sent to the office of the open-price section of the

American Dyes Institute. It was supposed to be a bona fide copy of the order. The only requirement we had in the open-price section at all was that whatever report was made should be the truth and accurate

Senator STERLING. You are still the treasurer?

Mr. DANNER. Yes, sir; of the institute.

Senator STERLING. And the membership of the institute is now what?

Mr. DANNER. I think the membership is 34. I am not the secretary of the American Dyes Institute and do not keep track of the roll very intimately.

Senator STERLING. Do you solicit further memberships?

Mr. DANNER. Why, I think the institute would be very glad to receive additional members.

Senator STERLING. Why is it that the larger proportion of those engaged in the dye industry have not joined the American Dyes Institute?

Mr. DANNER. I am not intimately enough acquainted with the details of dyestuff manufacturers to be able to answer that question.

Senator STERLING. I understood, from a rather subrosa remark made behind you there, that it was because of the money cost. How much does it cost an individual manufacturer or company to become a member of the American Dyes Institute? In other words, what is the membership fee?

Mr. DANNER. The membership fee was $250 a year, or they were the dues. And then there were assessments.

Senator STERLING. There were the dues and then assessments besides?

Mr. DANNER. Yes, sir; assessments in addition.

Senator STERLING. What is the occasion for making assessments?

Mr. DANNER. The expenses of the institute have to be met.

Senator STERLING. Do not the dues meet them?

Mr. DANNER. No. Forty members at $250 a year each is about $10,000 per annum.

Senator STERLING. That brings the income up to $10,000 a year?

Mr. DANNER. Yes, sir.

Senator STERLING. How is that income expended?

Mr. DANNER. Well, they have a paid secretary, and counsel, and treasurer; and they have the expenses that all other organizations have in the work that they are doing.

Senator STERLING. What else in the way of organization work have they done, or do they do, than this open-price section, which has been abandoned—work that will be of benefit to the trade, I mean?

Mr. DANNER. Now, their principal work is legislative work. I understand the treasurer's statements have been put into the record, which statements give full details of all the expenses of the American Dyes Institute since it was organized.

Senator STERLING. And the expenses then are largely for the purpose of looking after legislation that will be of benefit to the trade or the dye industry or preventing hostile legislation?

Mr. DANNER. That has been the chief item of expense.

Senator STERLING. Have you any expense in the printing of circulars, etc.?

Mr. DANNER. We did issue one pamphlet explaining the Dyes Institute and its purposes shortly after it was organized, and that is approximately all the expense there. For a while the secretary got out some weekly bulletins, I think.

Mr. CHOATE. Those were all put in the record yesterday, Senator, a statement of the entire activities, a statement showing the entire expenses.

Senator STERLING. Very well, I do not want to repeat that. It may have all gone into the record. Who testified yesterday about that?

Mr. CHOATE. The president of the institute, Mr. R. C. Jeffcott.

Senator STERLING. Yes. I had to leave just as Mr. Jeffcott took the stand.

Mr. CHOATE. May I not state there, Senator, that the chairman asked for certified copies of the statements of expenses and receipts which were put in. We are furnishing in response to that demand photostat copies of the original, which will be certified by the treasurer.

Senator STERLING. Very well. Well, you can see that the chairman's mind and mine run along the same lines, if he asked for this information to be filed. Of course, I supposed it was here, and ready to be filed.

Mr. CHOATE. We offered it before he asked.

Mr. DANNER. Mr. Chairman, I have another statement I would like to read in connection with an activity which I was engaged in for the American Dyes Institute, if I may be permitted to do so.

Senator STERLING. Yes.

Mr. DANNER. The statement is as follows:

DEFENDANT'S EXHIBIT No. 293.

ASSIGNMENT

WHEREAS Francis P. Garvan, Alien Property Custodian, duly appointed, qualified and acting under the provision of the Act of Congress, known as the "Trading with the Enemy Act", approved October 6, 1917, and the amendments thereto, and the Executive Orders and Proclamations issued in pursuance thereof, is

vested with all right, title and interest in certain Letters Patent of the United States of America enumerated below, together with the right to recover all damages and profits by reason of past infringements thereof by any person, firm, corporation or government other than that of the United States of America, to wit:

No. 1,087,113 dated February 17, 1914, to Rudolf Goldschmidt, for Machine for Receiving Electric Waves:

No. 1,104,256, dated July 21, 1914, to Rudolf Goldschmidt, for Apparatus and Method of Receiving Electric Waves; and

No. 1,104,257, dated July 21, 1914, For High Frequency Generator; and

WHEREAS the AMERICAN RADIO COMPANY, a corporation organized under the laws of the State of Delaware, and having an office and place of business at No. 49 Wall Street, in the Borough of Manhattan, City and State of New York, is desirous of acquiring the entire right, title and interest in, to and under said United States Letters Patent:

NOW, THEREFORE, to all whom it may concern, be it known that for and in consideration of the sum of One Dollar ($1.00) in hand paid to said Francis P. Garvan, Alien Property Custodian, by said AMERICAN RADIO COMPANY, and other good and valuable considerations, the receipt of which is hereby acknowledged, said Alien Property Custodian has assigned, sold, transferred and set over, and by these presents does assign, sell, transfer and set over unto the said AMERICAN RADIO COMPANY his entire right, title and interest in, to and under each and all of said patents and the inventions thereof, and in, to and under any reissue or reissues, extension or extensions thereof, the same to be held and enjoyed by said AMERICAN RADIO COMPANY, its successors and assigns or other

legal representatives, for its own proper use and behoof, and for the use and behoof of its successors, assigns, or other legal representatives to the end of the term or terms for which said Letters Patent are granted or issued, or may be extended, renewed or reissued, as fully and entirely as the same would have been held and enjoyed by said Alien Property Custodian had this sale and assignment not been made:

TOGETHER WITH ALL CLAIMS for damages and profits by reason of past infringements of said Letters Patent by any person, firm, corporation, association or government other than that of the United States of America, with the right to sue and collect the same for its own use and behoof and for the use and behoof of its successors, assigns or other legal representatives,

IN WITNESS WHEREOF said Alien Property Custodian has signed these presents and hereunto affixed his seal of office, this 20th day of November, 1919.

(Sgd.) FRANCIS P. GARVAN,
As Alien Property Custodian.

CITY OF WASHINGTON, D. C., } *ss.:*
DISTRICT OF COLUMBIA, }

On this 26th day of November, 1919, before me came FRANCIS P. GARVAN, Alien Property Custodian, duly appointed, qualified and acting under the provisions of an Act of Congress known as the "Trading with the Enemy Act" approved Oct. 6, 1917, and amendments thereof, and the Executive Orders and Proclamations issued in pursuance thereof, and he duly acknowledged to me that he executed the foregoing instrument as Alien Property Custodian as aforesaid.

(Sgd.) ODEN B. GRAY,
(Seal) *Notary Public.*

My commission expires October 12, 1920.

DEFENDANT'S EXHIBIT No. 294.

ASSIGNMENT FROM UNITED STATES GOVERNMENT, BY F. D. ROOSEVELT, ACTING SECRETARY OF NAVY, DATED NOVEMBER 11, 1919, RE-CONVEYING TO ALIEN PROPERTY CUSTODIAN THREE PATENTS THERETOFORE CONVEYED TO HIM BY DEFENDANT'S EXHIBIT No. 144.

Note: Same as Defendant's Exhibit No. 145 and not reprinted here. *(See Record, Exhibits, Vol. V, page 2801.)*

DEFENDANT'S EXHIBIT No. 295.

EXTRACT FROM CONGRESSIONAL RECORD, PAGE 12540, AUGUST 17, 1922.

WAR DEPARTMENT,
Washington, August 15, 1922.

CHAIRMAN UNITED STATES SENATE FINANCE COMMITTEE,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR MCCUMBER: On July 26, 1921 I wrote your committee, calling attention to the fact that the Fordney tariff bill would not protect the American organic chemical industry from destruction by German competition. Allow me to reiterate the importance of the preservation of this industry to the country from the standpoint of national defense.

The dye industry is the backbone of the organic chemical industry, on which all Governments are dependent for their high explosives, their medicines and other materials. Inasmuch as the coal-tar industry, which is the basis of all dyes, is also the basis of all

high explosives and of synthetic medicines, it is of vital importance to prepardness that the dye industry be developed to the fullest possible extent in this country. The use of explosives will be far greater in any future struggle than in the World War.

Notwithstanding that from 1914 to 1917 our great steel industries and our rapidly developing chemical industries had been working feverishly to increase their facilities to supply ammunition, guns, and rifles to the Allies, it was more than a year after we entered the war before those industries were able to supply ammunition, guns, rifles, etc., to meet the American needs. Even then our chemical industry was so undeveloped in 1917 that it was necessary for the Government to build large high-explosive plants and powder factories.

Germany realizes the importance of predominance in organic chemical industries as a most valuable means of preparedness and has formed of them one great trust. The German trust can produce dyes and similar material so much cheaper than the Americans produce them that no ordinary tariff can prevent the destruction of the American industry, which will thereby cripple the whole organic chemical industry.

It is, therefore, urged that the dye-control provisions of the emergency tariff act of 1921 be extended another year to give the industry a chance to stabilize and to enable conditions in the dye industry to be carefully observed and the products determined which should be protected in order to firmly establish that industry in the United States.

Very truly yours,

JOHN W. WEEKS,
Secretary of War.

DEFENDANT'S EXHIBIT No. 296.

THE SECRETARY OF THE NAVY
WASHINGTON

July 27, 1921.

My Dear Senator:

Understanding that the recommendation of the Ways and Means Committee of the House placing a limited embargo on the importation of coal-tar products (HR7456 General Tariff Revision Page 6) was rejected by the House, I am earnestly requesting that your Committee give special attention to this feature.

The Longworth Bill (HR8078 66th Congress) included a selective embargo regulating the importation of organic chemicals particularly those useful in the preparation of explosives and toxic gases used in chemical warfare.

The Fordney Bill as reported from the Committee included a modified clause to the same effect. It is of great value to the Navy to encourage the development of chemical activities in the manufacture of all products connected with the above mentioned articles, especially those manufacturers whose establishments can easily be diverted to the manufacture of war materials when needed. The restoration of the embargo clause will be of material help and I will greatly appreciate your assistance to this effect.

Sincerely yours,

(Sgd.) EDWIN DENBY.

Hon. Boies Penrose,
United States Senate,
Washington, D. C.

DEFENDANT'S EXHIBIT No. 297.

67TH CONGRESS,

REPT. 248,
Part 1.

HOUSE OF REPRESENTATIVES.

1st Session.

GENERAL TARIFF REVISION.

JULY 6, 1921—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. FORDNEY, from the Committee on Ways and Means, submitted the following

REPORT.

[To accompany H. R. 7456.]

The Committee on Ways and Means to whom was referred H. R. 7456, a bill to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, and for other purposes having had the same under consideration, report it back to the House without amendment and recommend that the bill do pass.

The reason for tariff revision at this time is well known. The present law is wholly inadequate. Its failure is recognized beyond dispute. The prophecies of its proponents have proven false. The framers of the act of 1913 contended that lower rates would reduce production costs and enable Americans to capture foreign trade, with resulting industrial activity and general prosperity. From the date of the enactment of the low rates, however, until the outbreak of the war in Europe, exports not only did not increase but declined with rapidity and alarming regularity, while imports increased. America did not capture

foreign markets but foreigners captured American markets. Industry languished and unemployment prevailed.

The war checked the flood of foreign goods and created a demand for supplies of every description and the adverse conditions of the fall and winter of 1913 and the spring and early summer of 1914 were to a large extent forgotten during the continuation of hostilities.

With the ending of the war and the resumption of production in Europe, foreign competition is once more being keenly felt. Industry and trade in the United States is at low ebb. This industrial depression is the inevitable result of the offering of foreign goods upon the American market at less than the American cost of production.

The enactment of the bill herein recommended will do much to relieve the present situation. Rates of duties are proposed which will permit the products of American labor to compete with foreign goods in the American markets without sacrificing the American standards of living.

The committee has worked diligently to secure information on which to base its conclusions. Under authority of House resolution 63, passed May 27, 1919, the committee directed the preparation of a publication, Summary of Tariff Information. The Tariff Commission contributed largely to this work. The Summary contains a comparison of existing law with the preceding law and gives a resumé of pertinent court and Treasury decisions thereunder. The Summary also contains definitions and other tariff data in condensed form under each paragraph. At the request of the Ways and Means Committee, the United States Tariff Commission at the same time prepared a publication entitled "Statistics of Imports and Duties, 1908 to 1918, Inclusive."

Beginning on June 10, 1919, hearings were conducted by the committee on the subject of dyestuffs and other war industries, and much valuable information was furnished the committee. On December 8, 1920, general tariff hearings were announced. These hearings opened January 6 and continued daily until February 16, 1921. During the hearings 1,486 witnesses were assigned time on the committee calendar.

Following the close of the hearings the testimony and briefs of the various witnesses were arranged under the several schedules and printed in convenient indexed volumes for the use of the committee. In addition, all references to wages by various witnesses were segregated in a committee document entitled "Recapitulation of Wages in Industries, Domestic and Foreign."

The disparity between wages paid in America and abroad was very striking, but inasmuch as the information was in the most part furnished by interested parties, it was deemed desirable to secure additional information from official sources. At the request of the committee, the Department of Commerce cabled instructions to its foreign representatives directing the submission of latest available information in regard to wages in foreign countries. The response was prompt and generous and the data thus secured has been assembled by the committee in a committee document entitled "Wages in the United States and Foreign Countries."

The majority members of the committee took up the work of framing a bill on March 21, and the work has continued without interruption until June 29, on which date the bill was introduced in the House of Representatives. During the consideration of rates as well as during the hearings and previous thereto, the Tariff Commission has supplied the committee, in the form of tariff surveys, concise and comprehensive

information on various subjects. In addition to this, the staff of the Tariff Commission was placed at the disposal of the committee and has been called upon to work with the committee in the drafting of the various tariff schedules. Through these efforts the bill herein recommended proposes many desirable changes in arrangement and classification.

In addition to the Tariff Commission, the committee is indebted to the Treasury Department, the Department of Commerce, the Department of Agriculture, the Department of Labor, the Bureau of Standards, the Geological Survey, the Bureau of Mines, and other Government agencies for valuable and willing cooperation.

TITLE I.

DUTIABLE LIST.

SCHEDULE 1.

CHEMICALS, OILS AND PAINTS.

The Committee on Ways and Means, in the preparation of Schedule 1 of the present tariff bill (H. R. 7456), was furnished with detailed information on all the articles in the chemical schedule by the United States Tariff Commission in the form of so-called Tariff Information Surveys. This detailed information was supplemented by a report of the Tariff Commission on a Suggested Reclassification of Chemicals Oils and Paints. This report was prepared after a careful study of the phraseology of the act of 1913, and of the litigation and decisions arising during the period of its operation. It also involved a careful survey of the trade and commerce in such products. This investigation has revealed many provisions in which the names or descriptions of commodities or the specification of different grades or varieties of an article could be modified so as to make the tariff law

clearer, less liable to give rise to litigation, easier to administer, and more in accord with commercial practice and nomenclature. The committee adopted this reclassification as the basis for the Schedule 1 of H. R. 7456. It is believed, with such information at hand the committee has been able to present a chemical schedule which is more scientific and corresponds more nearly to the exact commercial usage than any chemical schedule of previous tariff acts.

The chemical industries of the United States since the passage of the tariff act of October 3, 1913, have undergone marked developments, and many fundamental changes have occurred that have influenced conditions of international trade in these products. Since then, many commodities have become of commercial importance, and it was necessary to give these commodities specific enumeration or special tariff treatment. In Schedule 1 approximately 100 chemicals have been given specific enumeration for the first time in tariff history. Many of these are the direct outgrowth of war conditions. On the other hand, many commodities, purely as a matter of custom, have been carried from one tariff to another, and have become obsolete in the commerce in chemicals. Such articles were dropped from the chemical schedule.

The general rate of duty throughout the schedule —chemicals, oils, and paints—have been established at a uniform level of 25 per cent ad valorem, with a few exceptions, where the committee thought that particular products which represented infant industries or materials essential to national preparedness, have been given slightly increased rates. In the case of specific rates, they were all converted to equivalent ad valorem rates on the basis of the present domestic prices, so that all specific rates in general are equivalent to about 25 per cent of the prevailing domestic prices. In the case of raw materials of foreign origin,

which were essential to the domestic industries, the committee left these on the free list, with the exception of a few commodities used as raw materials in the manufacture of luxuries, which were assessed a duty for revenue purposes. One of the outstanding examples in this latter case is that of chicle, the rates on which are the same as in the act of 1913. This product will yield between a million and a million and a half dollars revenue, annually.

DERIVATIVES OF HYDROCARBON GASES.

Paragraph 2 covers a group of chemicals which are derived from hydrocarbon gases obtained from natural gas or as waste products of petroleum cracking processes. These are of comparatively recent development in the United States and are closely allied to the production of explosives and poison gases. For example, ethylenecholorohydrin may be converted by a simple chemical process into mustard gas, one of the most important war gases, whereas ethyeleneglycol is very similar to glycerin and may be nitrated to form a high explosive. In order to encourage the manufacture of these products in the United States, they have been given special tariff treatment at a rate of duty slightly higher than the general scale of rates throughout the schedule.

CRUDE BOTANICAL DRUGS.

The rates (the same as in the act of 1913) in paragraph 34 are levied on several crude drug products which are large revenue producers. In addition, special consideration is given to several crude botanical drugs whose cultivation was introduced into the United States during the war perod. In previous tariff acts little consideration, from a protective standpoint, has ever been given to crude botanical drugs.

The complete cutting off of imported supplies at the outbreak of the war caused the prices of crude drugs to rise to unprecedented heights, and drug cultivation in the United States attracted considerable interest. Efforts were made to cultivate several indispensable drugs which appeared suited to American climatic conditions, and considerable success was obtained with the two important medicinals, bella donna and digitalis, and, to a lesser extent, with henbane and stramonium. These products have been given a rate somewhat higher than the rate (10 per cent ad valorem) generally applied to other crude botanical drugs, so as to stimulate continued cultivation in this country.

HYDROGENATED OILS.

Within the last 10 years the process of hardening vegetable or animal oils by chemical combination of the oil with hydrogen has become of great industrial importance in the United States. By this process the oils are usually changed from liquid condition to a solid, thus becoming of more beneficial use in the manufacture of lard substitutes, oleomargarine, and in the manufacture of soap. There was no provision in the act of 1913 for these important products, and their classification has been the subject of much dispute and litigation. These hydrogenated oils, together with other chemically treated oils, have been given a separate paragraph and the general rate of 25 per cent ad valorem levied.

ESSENTIAL OILS.

In the case of essential oils, they have been given treatment very similar to that in the act of 1909, when the more important oils in this class were free of duty. These products are necessary and essential raw materials in the manufacture of perfume materials, flavors, and perfumes. However, a few of the im-

portant oils have been made dutiable at 20 and 25 per cent ad valorem. These include the oils produced in the United States, either directly or distilled from imported raw materials. The two most important in this class are lemon and orange oil, which have in the past accounted for about one-half the revenue raised under the act of 1913 in crude or essential oils. Therefore, the duty of 20 per cent on these two oils will serve as a means of protection to the domestic industry and at the same time will return about $400,000 annually in revenue.

PERFUME MATERIALS AND PERFUMES.

The present tariff bill carries for the first time a logical arrangement and gradation of duties on perfume materials and finished perfumes. The simpler products and raw materials, such as animal perfume materials (civet, musk, castoreum and ambergris,) essential oils and floral products, such as pomades, concretes and essences, have been placed on the free list. The natural or synthetic aromatic chemicals, an industry which was created and developed in the United States during the period of the war, have been given a duty of 35 per cent ad valorem in paragraph 56, as they represent a separate industry, utilizing many of the essential oils as raw materials. The compounds and mixtures of essentials oils, natural or synthetic aromatic chemicals and floral products, which require only the addition of alcohol to make them into finished perfumes, are given a rate of duty slightly less than that of finished perfumes. It is in this group of products that the classification of 1913 was particularly weak and many hundreds of thousands of dollars in revenue were lost to the Government on these nearly finished perfumes. On the finished perfume ready for ultimate consumption, the rate of duty im-

posed is the same as that levied in the act of 1913, which, however, is only slightly higher than the rate in the act of 1909.

FERTILIZER MATERIALS.

The crude potash salts used primarily as fertilizer materials have been free of duty since the act of 1890. Prior to the war Germany held an almost complete monopoly of the world's trade in potash, which was made possible by the possession of the only known large deposits of soluble potash salts, located at Stassfurt, Germany, and near Hulhausen, Alsace. During the war the domestic production of potash was developed to a point where it supplied about 20 per cent of our prewar consumption. The two chief producing centers, Searles Lake, Calif., and the Brine Lakes of Nebraska, are located at a great distance from the general consuming districts of the United States, namely, the South Atlantic Seaboard States.

The committee was not convinced of the advisability of putting a permanent tariff on potash salts, but has recommended that a duty be placed on this material for a period of five years, so that domestic manufacturers may have an opportunity to demonstrate whether or not a potash industry can be developed in the United States which will be able to compete with the European deposits. This duty is on a sliding scale, and will diminish from 50 cents per unit of actual potash for the first two years, to 20 cents per unit in the fifth year, and after that period all crude potash salts are to be free of duty. During this five-year period it was necessary to assess a compensatory duty of 15 per cent ad valorem in addition to the duties levied in paragraph 75 on manufactured potassium salts, which are used only for chemical purposes and not as fertilizer raw material.

The committee has recomended a duty of three-fifths of 1 cent per pound on ammonium sulphate, another important fertilizer material. The production of ammonium sulphate in the United States was greatly expanded during the war, and the production at the present time is capable of supplying the entire domestic consumption. The production of this commodity in Germany was also greatly increased during this period, primarily by synthetic processes of atmospheric nitrogen fixation. These plants, subsidized and erected by the German Government during the war as an essential part of their plan for making explosives, are now available for the production of this commercial fertilizer material. The output of these plants is far in excess of the German consumption of nitrogenous fertilizer materials and a large exportable surplus is available. The committee believes that it is essential that the domestic production of this material be adequately protected, so that there will be no danger of stifling the American industry. It believes also that the duty on sulphate of ammonia will not cause any increase in the price of this material, as it competes directly with the Chilean nitrate of soda, which has been left on the free list. A study of price quotations for these two commodities over a period of years shows that the prices parallel each other very closely.

COAL-TAR PRODUCTS.

A new and most important provision of the chemical schedule, involving as it does a change of policy from the present and former tariff laws, is that which places a limited embargo for a period of three years on the importation of coal-tar products. Though differing substantially in its administrative features it provides for the enactment of legislation similar to that contained in House bill 8078, which passed the

House in the last Congress by a large majority but failed of action in the Senate. As in that bill, it divides coal-tar products into three classes—crudes, intermediates, and finished products—leaving the crudes on the free list, and the intermediates and finished products with a substantial tariff protection of 30 per cent ad valorem and 7 cents a pound in the case of intermediates and 35 per cent ad valorem and 7 cents a pound in the case of the finished products, as against 40 per cent ad valorem and 6 cents a pound on the intermediates and 45 per cent ad valorem and 7 cents a pound on the finished products in House bill 8078.

The process of producing the crudes is comparatively simple and inexpensive, they being actually present in coal tar and only requiring isolation. Any country which, like this, has an abundant supply of coal and a great industry like the steel industry requiring much coke has an unlimited supply of the raw material, and the crudes require, therefore, no protection; but with regard to the intermediates the situation is entirely different. Their production requires the most elaborate chemical processes, which can be carried out only by men of profound chemical knowledge and long experience, and such men are not yet available in this country in sufficient numbers. This is still more true in the case of the finished product, which may take any one of six different forms by further chemical processes. Thus intermediates may be converted into perfumes, pharmaceuticals, tanning materials, high explosives, poison gases, or into dyes. These finished products, therefore, requiring as they do further labor and chemical skill of a class very plentiful in Germany but still limited in this country, need at least a somewhat greater measure of protection than the intermediates.

The processes of manufacture of dyes, explosives,

and chemical gases are absolutely interdependent. Once having obtained, for instance, a certain intermediate by a long series of elaborate and complicated chemical processes it may be converted into sulphur black, one of the most widely used dyes, or into picric acid, one of the most important and necessary high explosives. The technical knowledge and skill, the materials, and the apparatus necessary to make high explosives and poison gases and their antidotes are precisely what are to be found in any well-equipped dye works and nowhere else. A nation, therefore, which has a thoroughly complete dye industry capable of supplying its dye needs is always prepared for defensive or offensive war so far as the production of explosives and chemical gases is concerned, and the experiences of the late war have proved that without these chemical essentials any nation under modern conditions is impotent either in attack or defense.

If, therefore, as seems likely, we are entering upon a period of international disarmament, possession of such an industry becomes of infinite importance. During such a period a nation possessing such a potential arsenal would be in a position to overwhelm any nation less well endowed and would be practically immune from attack.

Of perhaps equal importance from another point of view in the case of this industry is its bearing upon the advancement of medical and industrial chemistry. It is the one industry which deals on a gigantic scale with organic chemistry, and it is upon organic chemistry that progress of modern medicine rests. Salvarsan, for instance, was developed in a dye works laboratory and is the first known certain cure for one of the most terrible scourges of humanity. Scientists confidently predict that upon further development of organic chemistry will rest the discovery of cures for tuberculosis and other devastating diseases, even such

as cancer. This development must rest upon a further development in this country of skilled chemists, and it is only in a dye laboratory that large numbers of such chemists can find a livelihood.

A well-developed dye industry here will furnish a great reservoir of technically trained men and of scientific knowledge upon which the most important industries of the country may draw in time of peace and the Nation itself in time of war or threatened war.

The present dye industry in this country is absolutely a product of the late war. Up to that time Germany controlled the market of the world in dyestuffs, and such dye works as we had here were mere assembling plants for German materials and supplied only about one-tenth of the American market. To-day more than 200 different concerns are supplying something like 90 per cent of the American market for coal-tar products in quantity, though not in value. The absolute necessity of saving and fostering such an industry as this would seem to be beyond argument, and the only question that should arise is by what legislative method can its permanent continuance be assured?

Your committee is of the opinion that no tariff duties, no matter how high, can meet the conditions that would arise when Germany is again in a position to force her dyes and dyestuffs upon the American market. However other German industries may have suffered as a result of the war the German dye syndicate is as rich and powerful as ever. The great dye factories during the war were turned over to the production of explosives and poison gases and the chemists and laborers in these factories were immune from the draft. A vast amount of dyes and dyestuffs has been accumulated in recent years and their factories are now running at full time in the production of

others and the whole huge German dye industry, capable before the war of supplying the entire demand of the world, is now combined in a single immense trust organized on purpose to fight its way back to the former German world monopoly.

Utterly unscrupulous as the German syndicate was before the war when its supremacy was uncontested, practicing ruthlessly every form of corrupt and unfair competition known to commerce it is inevitable that in the almost immediate future, when instead of safe supremacy it faces possible destruction, it will attack all competitors with reckless disregard of business decency.

That attack inevitably will be concentrated upon us. France and Japan some time ago in the interest of their Government-aided dye industries placed more or less complete embargoes upon the importation of dyestuffs. Only recently Great Britain and Italy have placed a complete embargo upon dyestuffs—in the case of Great Britain for a period of 10 years. Russia is out of business. The market of the United States, therefore, is, except that of China, Germany's last opening. To penetrate it and destroy our domestic industry she will stop at nothing.

Under such conditions your committee is of the opinion that nothing short of a limited embargo will enable the American dye industry to continue in existence. The provisions contained in this bill have been very carefully drafted not only in the interests of the producer but particularly in the interest of the consumer of dyes. Against the so-called licensing system as contained in House bill 8078 strong objections were advanced by some of the consumers of dyes. The license system, therefore, has been entirely discarded. The restriction on the importation of dyes is confined in this bill only to such dyes as are now obtained in the United States on reasonable terms as to quality,

price, and delivery. All other dyes may be imported by the actual consumer of dyes with no license or restriction of any sort except that the supply is limited to six months. The only restriction upon the importer for sale is that he shall register with the Tariff Commission, thus giving opportunity to the commission to obtain facts as to prices and conditions of importation.

Your committee is not aware of any objection on the part of the textile industries or other legitimate consumers of dyes to the provisions contained in this bill. Your committee believes that this plan will furnish the necessary protection and that, too, without sacrificing revenue. We are convinced that this industry is too important to be risked, and therefore recommend the adoption of this certain, though unusual, means of defense.

DEFENDANT'S EXHIBIT No. 298.

COPY

The Chemical Foundation, Incorporated, and the Grasselli Chemical Company agree to give to the Department of State the Assurances asked for in the Department's letter of October 11.

The Department will make every effort consistent with its policy to bring about that the private importers shall utilize the machinery of the Textile Alliance for their imports to the end that the entire importation may be brought about through one channel.

The Department will instruct the Textile Alliance, Incorporated, to fill the orders of those consumers who have assigned their allocation certificates directly to the Textile Alliance first and the Department will

instruct the Textile Alliance that it may after having filled those orders import on behalf of private importers but for the ultimate benefit of allocation certificate holders such quantities from the official sources as will be available from the official sources after the previous orders have been filled.

If it shall be deemed desirable to accept the cartel offer the Department will instruct the Textile Alliance, Incorporated, to treat all consumers alike in filling orders from that source irrespective of whether the allocation certificates have been directly assigned to the Textile Alliance or to private importers.

(Sgd.) THE CHEMICAL FOUNDATION, INC.
(By J. H. CHOATE, Jr.)
THE GRASSELLI CHEMICAL CO.
CASHMAN,
Asst. Sec.

Oct. 25, 1919.

DEFENDANT'S EXHIBIT No. 299.

EXECUTIVE ORDER

AUTHORIZING THE ALIEN PROPERTY CUSTODIAN TO SELL CERTAIN PROPERTY AT PRIVATE SALE.

By virtue of the authority vested in me by an Act of Congress entitled "An Act to define, regulate, and punish trading with the enemy and for other purposes", approved October 6, 1917, known as the "Trading with the Enemy Act", and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1918, and prior fiscal years on account of war expenses and for other purposes", approved March 28, 1918, and the amendment to such Act embodied in "An Act making

appropriations to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years on account of war expenses, and for other purposes", approved November 4, 1918, to make certain orders such as that herein contained, I hereby, in the public interest, make the following determination and order:

The Alien Property Custodian is hereby authorized to sell at private sale, at such time and place as to him or to his authorized agent may seem advisable, without public or other advertisement, Nine Hundred Eighty-Nine (989) shares of the common capital stock of the Busch-Sulzer Brothers-Diesel Engine Company, a corporation organized under the laws of the State of Missouri, out of a total issue of Twelve Thousand Five Hundred (12,500) shares of the par value of One Hundred Dollars ($100.00) each, which said Nine Hundred Eighty-Nine (989) shares were heretofore seized by the Alien Property Custodian under the provisions of the said Act, as the property of Rudolph Diesel, Jr., of Munich, Germany.

My reasons for the foregoing determination and order are:

(a) That property such as that herein described cannot usually be sold to advantage at public sale after public or other advertisement.

(b) That advantageous offers, all of Forty Dollars ($40.00) a share, have been received by the Alien Property Custodian for the purchase of the said Nine Hundred Eighty-Nine (989) shares.

(c) That the said Rudolph Diesel, Jr., has expressed his assent to the sale of the said Nine Hundred Eighty-Nine (989) shares at the price offered.

(d) That an attempted sale at auction would be a useless formality and would involve unnecessary

expense, delay and inconvenience, which should be avoided.

WARREN G. HARDING.

THE WHITE HOUSE,
Dec. 11th, 1922.

[No. 3764.]

DEFENDANT'S EXHIBIT No. 300.

PAMPHLET ENTITLED "THE FUTURE INDEPENDENCE AND PROGRESS OF AMERICAN MEDICINE IN THE AGE OF CHEMISTRY."

Note: Same as Defendant's Exhibit No. 97.

[Not printed.]

DEFENDANT'S EXHIBIT No. 301.

PAMPHLET ENTITLED "AIMS AND PURPOSES OF THE CHEMICAL FOUNDATION, INCORPORATED, AND THE REASONS FOR ITS ORGANIZATION."

[Not printed.]

DEFENDANT'S EXHIBIT No. 302.

UNITED STATES *vs.* CHEMICAL FOUNDATION INC.,

LIST OF ORIGINAL SUBSCRIBERS TO THE UNDERWRITING OF THE STOCK OF THE CHEMICAL FOUNDATION INCORPORATED.

MEMBERS OF THE AMERICAN DYES INSTITUTE

Althouse Chemical Company	$500.
American Aniline Products	1,000.
Ault and Wiborg Company	5,000.

Butterworth Judson Corp.,	$10,000.		
John Campbell Co. Inc.,	5,000.		
Commonwealth Chemical Corporation	500.		
Dicks, Davis Co., Inc.	500.		
E. I. duPont de Nemours & Co.	125,000.		
Dye Products & Chemical Co.	500.		
Consolidated Color & Chemical Co.	10,000.		
Dow Chemical Company	500.		
Essex Aniline Works	600.		
Grasselli Chemical Co.	30,000.		
Heller & Merz Co.	20,000.		
Marden, Orth & Hastings Corp (Calco Chemical Co.)	50,000.		
Merrimac Chemical Co.	20,000.		
Metals Disintegrating Co. Inc.,	500.		
Monroe Color & Chemical Co.	500.		
Geo. H. Morrill Co.	500.		
National Aniline & Chemical Co.	37,500.		
Naugatuck Chemical Co.	500.		
Sherwin Williams Co.,	5,000.		
U. S. Color and Chemical Co.	3,000.		
Monsanto Chemical Works	500.		
Total Number — 24. Total Amt.	$327,100.	24	$327,100.

Original Subscribers who were not Members of the Institute at that time but who Subsequently Joined it.

Atlantic Dye Stuffs & Chemical Co.	500.		
Barrett & Company	10,000.		
The Newport Company	20,000.		
Total Number— 3. Total Amt.	$30,500.	3	30,500.

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Original Subscribers who were not Members and who never Joined the Institute

Central Dye Stuff & Chemical Co.	$10,000.		
General Chemical Company	50,000.		
General Electric Company	1,000.		
Hooker Electro Chemical Co.	10,000.		
H. A. Metz Laboratories Inc.,	10,000.		
The Rector Chemical Co.	500.		
Roessler & Hasslacher Chemical Co.	1,000.		
Semet Solvay Company	10,000.		
Tartar Chemical Works.	500.		
Total Number— 9. Total Amt.	$93,000	9	$93,000.
		36	$450,600

There were ultimately 158 stockholders, the total number of those who were members of the American Dyes Institute being 31. The remaining 127 stockholders were divided among numerous trades such for instance as heavy oils and chemicals, textiles, steel, aluminum, cotton oil, importers, electric, ceramics, food products, tires, iron, bleachers, pharmaceuticals, finishers, salt, machinery, industrial alcohol, pulp and paper, etc.,

NOTE

Later when the stock subscription was extended there were four subscribers who subsequently became members of the Institute.

Abbott Laboratories	$1,000.
Hayden Chemical Works	1,000.
Peerless Color Co. Inc.,	1,000.
Zinsser & Co.,	1,000.

Neither at the time when the stock was underwritten nor afterwards did any of the following members of the American Dyes Institute subscribe:

Atlas Color Works
Beacon Color & Chemical Co.,
Certified Chemical Corp.,
Frank Hemingway Inc.,
Holland Aniline Co.
Chemical Company of America.
Holliday Kemp Co.,
Hydrocarbon Chemical Products Co.
H. Kohnstann & Company
Organic Salt & Acid Co.,
Transatlantic Chemical Corp.,
Zobel Colors Works Inc.

DEFENDANT'S EXHIBIT No. 303.

CONSTITUTION AND BY-LAWS OF AMERICAN DYES INSTITUTE AS AMENDED.

AMERICAN DYES INSTITUTE

CONSTITUTION

ARTICLE I.

NAME.

The name shall be AMERICAN DYES INSTITUTE.

ARTICLE II.

OBJECTS.

A. To promote and encourage the manufacture and use of American dyes; to co-operate with Congress, the Tariff Commission, the Federal Trade Commission and all governmental agencies to secure protection against unfair competitive methods by foreign producers who at the conclusion of the war may seek to destroy a new and necessary industry and to again

monopolize the American market, not only in dye stuffs but in chemicals essential to national protection.

B. Publicity in the transaction of business, and cordial and friendly relations among members, by means of monthly and other stated meetings, thereby removing, so far as possible, misunderstandings and ill feelings due to the spreading of false reports and baseless charges and ignorance of conditions prevailing in the industry.

C. To collect and disseminate accurate information relating to the manufacture and sale of dyes and chemicals and kindred products, to the end that each manufacturer, whatever his output, may be on equal footing with other manufacturers with respect to the data necessary for the intelligent conduct of his business, on the belief that a policy of publicity in trade is better than one of secrecy, and in the hope that through the distribution of authentic and statistical information, manufacturers may be enabled more accurately to gauge the flow of supply and demand, and thereby keep their works in more constant operation and give labor more steady employment.

D. To co-operate with the Federal Trade Commission to expose and suppress unfair methods of competition.

E. To devise a scientific system of cost accounting, to the end that every one engaged in the industry may accurately know the cost of his output. In this connection, it is not the purpose of the Institute to impose upon any member any cost items or to use in any manner the cost system as a means for controlling prices.

F. The bringing out into the open of all competitive conditions and the introduction of the open-price policy, to the end that whatever price information is distributed will be absolutely accurate and confined to sales and prices that have been actually made. Noth-

ing herein stated permits any member of the Institute to file any information regarding any price he expects to make or would like to obtain.

G. The standardization so far as practical of Dyes to the end that wasteful duplications and wasteful production of many shades differing very slightly one from the other may be eliminated or minimized and also to the end that the manufacturer best situated and best equipped to produce certain dyes may confine his attention as far as possible to the dyes he can most economically produce.

It is a fact at the present time that with the rapid growth of the industry due to war conditions manufacturers are attempting to produce a variety of dyes much larger in number than they can possibly hope to produce and sell under normal peace conditions; therefore, the conservation of resources and the firm establishment of the industry demand that the most careful consideration be given to the particular advantages each manufacturer may have for making a particular product. Without attempting any arbitrary allotment or apportionment of the business, the development of accurate cost and price statistics will enable each manufacturer to determine for himself wherein he can supply the public at the lowest cost.

No Penalties.—There are no penalties of any kind or character connected with the operation of the Institute. Members may or may not file information called for by the Reporting Plan hereinafter set forth; if they do not file they get no information; if they do file, they get like information in return.

No Secrecy.—There is nothing secret about either the meetings or the operations of the Institute. All its proceedings are reduced to writing and carefully preserved in the minutes. Customers may attend meetings and become familiar with the operations of the organization. Members are free to invite competitors, who are not members, to attend meetings.

No RESTRAINT.—Nothing in the plan or operation of the Institute shall be understood or construed as directly or indirectly restraining the freedom of any member to at all times quote such prices and terms as he pleases, each member being free to compete for business as he would be if the Institute did not exist.

ARTICLE III.

OFFICERS.

Section 1. The officers shall be a President, a Treasurer, and one Secretary for the Open Price Division of the Institute, and one Secretary for the General Work of the Institute.

The election of the Secretaries, together with their compensation, shall be named by the Executive Committee, subject to the approval of the Institute; the Executive Committee may in its discretion combine the work of the two Secretaries in the office of one Secretary.

Section 2. There shall be an Executive Committee consisting of the President and seven members.

The Executive Committee shall have power to increase its number.

The Executive Committee shall have the selection of the Secretary or Secretaries, the fixing of their compensation, and also the retaining of counsel at such compensation as may be agreed upon—all subject to the approval of the Institute.

Section 3. A Board of Governors which will include the members of the Executive Committee, and will represent as nearly as possible as many different states, and as many different branches of the industry as possible. The Board of Governors will name the members of the Executive Committee and unless otherwise provided by resolution of the Institute, or of the

Board of Governors, the members of the Executive Committee and the members of the Board of Governors will hold office for one year or until their successors are appointed.

Article IV.

MEMBERS.

Section 1. Any corporation, firm or individual engaged in the manufacture of Dyes and intermediates and kindred products in the United States is eligible to membership and may become a member by being proposed by any member of the Institute and approved by the Executive Committee and duly elected by a majority of the members present at any regular industry meeting.

Section 2. Application for membership and resignations must be transmitted in writing to the Secretary.

Section 3. The annual dues shall be $250 for each member, payable on January 1st, or at such other times as the Executive Committee may fix.

Section 4. No member need become a member of the Open Price Section unless he expresses in writing his desire to be so included.

All expenses occasioned by and properly chargeable to the Open Price Plan shall be borne by those members who signify their desire to be members of the Open Price Section.

The expenses incidental to maintain the Open Price Section shall be ascertained by a Committee of four, made up of two members who are not members of the Open Price Section, and when the budget of the Open Price Section is so determined same will be raised by assessments upon members of said Section, said assessments to be made in accordance with the judgment and discretion of the Executive Committee.

Article V.

MEETINGS.

Section 1. The regular meetings of the Institute shall be held on the first Tuesday of each month, or at such dates and places as the Executive Committee shall name.

Due notice of meetings shall be sent by the Secretary to each member at least ten days in advance of such meetings.

Section 2. A majority of the members, when present at any meeting, shall constitute a quorum.

Section 3. The meeting held in the month of January of each year shall be the annual meeting of the Institute.

All meetings of the Institute shall be open to members, competitors and customers.

Article VI.

ELECTION OF OFFICERS.

The election of officers shall take place at the regular annual meeting in January. Those having a majority of the votes of those present shall be declared elected.

Article VII.

AMENDMENTS.

Amendments to these articles may be proposed at any regular or special meeting. Due notice of such amendments shall be sent by the Secretary in writing to each member at least ten days in advance of the meeting at which such amendments are to be voted upon, and an amendment to be adopted must receive at least a two-thirds vote of the members present.

Article VIII.

FREEDOM OF TRADE.

No member shall enter into any agreement or understanding of any nature or kind whatsoever, the

object of which is to restrain trade, limit competition, regulate prices, or do any act which is contrary to the spirit and letter of the law, or which is contrary to the objects of the Institute, as set forth in this constitution.

BY-LAWS.

Section 1. PRESIDENT. It shall be the duty of the President to preside at all meetings of the Institute and of the Executive Committee, to appoint all committees not otherwise provided for, and in case of the equal division of the members on any question, to cast the deciding vote. He shall also have power to call the Executive Committee together at such time and place as he may select and, upon the written request of five members, he shall be required to call a special meeting of the Institute.

Section 2. BOARD OF GOVERNORS. It shall be the duty of the Board of Governors to name the members of the Executive Committee, and perform such other duties as may be assigned to them by the Institute.

Section 3. TREASURER. It shall be the duty of the Treasurer to collect and receive all moneys of the Institute, to pay all orders for money, when countersigned by the Secretary, and to keep a correct record of the receipts and disbursements, an abstract of which, together with the necessary vouchers, he shall exhibit at the regular January meeting, or whenever called upon by the Executive Committee.

Section 4. SECRETARY. It shall be the duty of the Secretary to keep a careful record of the transactions of the Institute and of the Executive Committee, to notify all members at least five days in advance of the times and places of all meetings, to examine all bills and countersign all orders on the Treasurer, to conduct correspondence, to collect information contemplated in the Constitution and Reporting Plan, and to

perform such other duties as may be assigned to his office.

In the event two Secretaries are named by the Executive Committee it shall be the duty of one Secretary to perform such duties in connection with the Open Price Division as may be assigned to his office by the Executive Committee or the Institute, and it shall be the duty of the second Secretary to perform such general and other duties as may be assigned to his office by the Executive Committee or the Institute.

Section 5. EXECUTIVE COMMITTEE. The Executive Committee shall have the management of the affairs of the Institute and, subject to the approval of the Institute, fix the dates and amounts of assessments. They shall also, subject to the approval of the Institute, fix the compensation and terms of employment of the Secretary or Secretaries, employ counsel, and provide for such other expenditures as may be necessary.

Section 6. MEMBERSHIP. Applications for membership may be acted upon at each monthly meeting, due notice of application having been given to the Secretary at least ten days before the meeting at which action shall be taken, so that the Secretary can notify the members of such application.

Section 7. VOTING POWER. Members may be represented at any meeting by authorized delegates, who shall be entitled to full rights and privileges of the members they represent, but only one vote shall be cast on behalf of each member.

Section 8. DROPPING OF MEMBERS. By a two-thirds vote of the members present at any meeting, a member, providing he has been given ten days' notice of the proposed action and an opportunity to be heard, may be dropped for failure to pay any assessments within thirty days after same are made, or for failure to conform to the constitution and the by-laws, or for filing false or misleading information.

Section 9. REGULAR COMMITTEES. The following committees will be appointed by the Executive Committee:

Committee on Standardization.

Committee on Cost Accounting.

Committee on Trade Promotion.

Section 10. ORDER OF BUSINESS. The order of business shall be as follows:

1. Calling the roll.
2. Reading of the minutes.
3. Reports from members of conditions affecting the industry.
4. Election of new members.
5. Reports of officers.
6. Reports of committees.
7. Receiving of communications.
8. Unfinished business.
9. New business.
10. Election of officers.

Section 11. AMENDMENTS TO BY-LAWS. Amendments to by-laws may be proposed at any regular or special meeting. A copy of such proposed amendment must be sent to each member by the Secretary, in writing, at least ten days in advance of such meeting. To adopt any amendment it must receive a two-thirds vote of the members present.

REPORTING PLAN.

The following plan is suggested for the gathering and distribution of accurate production and price information:

For the time being the Reporting Plan *covers only Dyes and Intermediates.*

1. CONTRACTS. Each member will file with the Secretary on April 1st, 1918, copies of, or full particulars

regarding, all his contracts then outstanding for Dyes and Intermediates.

This information will be immediately interchanged by the Secretary among members filing contracts with the same customer, covering substantially the same materials.

2. On and After April 1st, 1918, each member will file *daily* a copy of every contract which he may make and this information will be immediately interchanged among members who have on file, or who make contracts with the same customer for substantially the same Dyes or Intermediates.

3. ORDERS. Each member will file from day to day a copy of every order he books for Dyes or Intermediates beginning with April 1st, 1918.

If any special terms, concessions or inducements of any kind or nature are given to secure the order same must be reported in detail with the order.

This information will be interchanged among members.

(a) who have contracts in effect with, or

(b) who file orders from the same customer for substantially the same materials.

4. QUOTATIONS. On and after April 1st, 1918, each member will report to the Secretary each day full particulars regarding every quotation, verbal or written, he or any of his representatives may make on Dyes or Intermediates. If quotations are made verbally, members are earnestly urged as a matter of sound business practice to confirm such quotations in writing and send a copy of such confirmation to the Secretary.

This information will be interchanged among members.

(a) Who quote the same customer upon substantially the same Dyes or Intermediates;

(b) Also, with members who have on file contracts with the same customer covering substantially the same materials;

(c) Also, among members who have on file unfilled orders from the same customer covering substantially the same materials.

(But to simplify the exchange at the outset and until further directed, the Secretary will *not* exchange

(b) Contracts

(c) Orders

on file with quotations; that is to say, orders and contracts with the same customer covering substantially the same materials will be interchanged, but at the outset a quotation to a customer will not entitle the party quoting to information regarding actual orders and contracts on file with that customer even though they cover substantially the same materials.)

It will thus be seen from the paragraphs providing for interchanges of information regarding contracts, orders and quotations that no information regarding any contract, order or quotation filed by a member is sent to any other member unless such other member has on file a contract, order or quotation to the same customer covering substantially the same Dyes and Intermediates.

The complete filing and prompt distribution of the information covered in paragraphs 1 to 4, inclusive, will not only make a valuable statistical price record in the Secretary's office, which will be available at all times to the Federal Trade Commission, the Tariff Commission and any Committee of Congress interested in fostering the American dye industry, but it will also tend to minimize speculative and overbuying, which is one of the evils of the industry at the present moment, and unless eliminated no accur-

ate statistics regarding the real requirements of the industry can be compiled.

It is important that each member in filing his reports of contracts, orders and quotations so describe his product that the Secretary can identify same correctly, and make the proper interchanges. If the Secretary is in doubt regarding the substantial identity of the products covered by any two or more contracts, orders or quotations, he will not make the interchange but will ask the members to describe more particularly the products intended to be covered.

There is nothing in the plan or workings of the Institute to directly or indirectly deter members from making such prices, and such terms, and such changes in same as each sees fit. After a member receives, through the operation of the Reporting Plan, information regarding another member's prices, or terms, and finds same are lower than his own, he is at liberty to change his own prices and terms as many times as he sees fit, precisely as if the Institute did not exist.

In the event any member revises his own prices and terms, after receiving information through the open price plan regarding the prices and terms of other members he will, in all fairness, immediately file his changes and revisions, to the end that such other members may have opportunities to revise their prices, and still further compete for the particular business.

In the event that any member sees fit to withhold any information regarding his quotations or orders, he is at full liberty to do so, but if he does do so he will notify the Secretary to that effect, and notice will be sent to the other members, and there will be no price information interchangeable with that member until he notifies the Secretary that he resumes.

NOTE: No information regarding prices or revi-

sions thereof, are sent to the Secretary in *advance* of the actual making or mailing of same to customer.

On Government orders, and contracts let by states, cities and public corporations generally, the bids, if filed, will be held by the Secretary, and no information interchanged or given out until after the day and hour fixed by the public body for opening and letting.

Inasmuch as it is the object of the Institute to induce private parties to adopt the open policy pursued by the Government, it is provided, that where any buyer or purchasing agent pursues the Government policy, namely, asks for bids in good faith, naming the date and hour when same will be opened, in the presence of bidders and the order then and there given to the lowest bidder, the Institute will not interchange any information regarding bids and prices until after the date and hour fixed. But where the private buyer pursues the policy of asking for bids with no intention of letting the contracts in good faith to the lowest bidder, but with the intention of using the bids to play one bidder against another by making perhaps misleading statements regarding the bids he has received with the result that very often the lowest bidder is induced to cut his own bid under the impression the purchaser has a lower price when he has not, the Institute interchanges the information, as above described, in order that all bidders may be on a footing of equality with the purchaser in all negotiations.

PRODUCTION STATISTICS.

(*The following are suggestions for future consideration. At the start these reports will not be called for.*)

1. Each member will file on blanks to be specially

prepared, a weekly report of his production of each Dye and Intermediate.

This information the Secretary will combine in a statistical summary which will show the *total* production of each Dye and each Intermediate, without disclosing the data filed by each member. This weekly summary will be sent to each member.

2. A weekly report of Work Ahead expressed in days, weeks or months on each class of products.

The object of this report is to show in a general way, but also as accurately as possible, about how many days', weeks' or months' work ahead each member has for a particular Dye or Intermediate or a particular class of Dyes or Intermediates as may be most convenient. Suitable blanks will be worked out and distributed to the members.

This information the Secretary will compile on a sheet which will give the name of each member with the work ahead such member has for each particular class of Dyes and Intermediates, and copies of said sheets will be mailed to all members.

At the outset it cannot be too often repeated that members may or may not file the information covered by the Reporting Plan and all arguments against filing information are best answered by the simple statement, "If you do not wish to file, there is no obligation to do so." But each member will state of record on the minutes to what extent he does or does not file, so there may be no misapprehension regarding the attitude of his company.

DAILY BULLETIN.

(*When the Daily Bulletin will commence will be decided at a future meeting.*)

The Secretary will compile at the close of each day a brief bulletin which will show all quotations,

orders and contracts filed in his office during the twenty-four hours previous and a copy of this bulletin will be sent to each member whether such member is filing any information or not. The bulletin will *not* give the name of either the members who file the price information or customers to whom prices are made. It will simply show under the head of *Quotations* all the different quotations made during the twenty-four hours previous on all the Dyes and Intermediates covered and under the head of *Closed Business* all prices obtained in orders and contracts filed.

If all manufacturers contribute to the Reporting Plan, it is obvious that this bulletin will be very much like the reports of the New York Stock Exchange, showing simply so many closed transactions with the amounts and the prices but without the names of either sellers or buyers. It would go one step farther than the Stock Exchange report in that it would also show all quotations—offers to sell—without the name of the manufacturer quoting or the customer to whom the quotation is made.

In short, the bulletin is a daily price current made up from *actual* prices.

DEFENDANT'S EXHIBIT No. 304.

RAMSAY HOGUET
149 Broadway,
New York City.

New York, February 25, 1919.

Capt. W. H. Swenarton,
Office of the Chief of Ordnance,
Nitrate Division,
Washington, D. C.

Dear Sir:

Referring to your letter No. 108570 enclosing list

of Badische Aniline & Soda Fabrik patents in which the Nitrate Division is interested, I believe that all of these patents have already been demanded and are therefore in the possession of the Alien Property Custodian and that the United States can therefore be released from claims under such patents.

I will have the list in your letter checked against the demands issued, to ascertain whether all of the patents have been demanded, and as soon as this is done will take up the matter of releasing the Government.

Will you kindly advise whether a title search has been made on each of the patents contained in your list to ascertain whether they are now owned by the Badische Company, as this office is informed that a large number of patents relating to the fixation of nitrogen formerly owned by the Badische Company were assigned to a Norwegian Company some time prior to the war.

Will you please convey to Major Holcombe my regrets at being unable to see him when I was in Washington last week. I was unfortunately recalled to New York by a matter of some urgency on Friday. I shall probably be in Washington towards the end of this week and will endeavor to call upon Major Holcombe at that time.

Yours very truly,

(Sgd.) RAMSAY HOGUET.

RH:P

DEFENDANT'S EXHIBIT No. 305.

P. S. & T.—072-15. M.P.B. 072/25 (Enemy Owned)

WAR DEPARTMENT

CHEMICAL WARFARE SERVICE, U. S. A.

Unit F, Floor 3

Seventh and B Streets NW.

Washington, D. C.

MTB/BEH

April 21, 1919.

From: Marston T. Bogert, Colonel, C. W. S., U. S. Army.

To Major A. C. Holcombe, Room 237, State, War and Navy Building, Washington, D. C.

Subject: Ownership of Alien Enemy Patents.

1. Replying to your inquiry as to the attitude of the Chemical Warfare Service towards the question of whether enemy alien patents should be transferred to the Chemical Foundation, Inc., or to be taken over by the Government, the Director of the Chemical Warfare Service is out of town and, as I have no authority to speak for the Chemical Warfare Service, I can but express my own personal viewpoint.

2. The most important desideratum is that these patents should be so handled as to result in the greatest good to the greatest number of our people; that is they should be made of some real use. It is believed that this can be realized by vesting the ownership of these patents in the hands of those who are in the best position to make use of the same in the development of our own American chemical industry, and that the Chemical Foundation, Inc., represents such a group.

3. Under the impetus, opportunities, and necessities of war conditions, American chemical industry

has expanded and developed most inspiringly and we are in a position not only to take care of our own domestic needs in most directions, but are also ready to compete in the world's markets for trade in commodities hitherto largely controlled by Europe.

4. For the protection of our own domestic markets, and to secure our fair share of the world's post-war international commerce, it is essential that these enemy alien patents be made actually *available* for our chemical manufacturers.

5. Government ownership, while theoretically attractive, unfortunately is apt to involve such difficulties, complications and impediments of administration, such delays in getting definite action, and such possibilities of blighting political influences, that the patient may die before the remedy is finally and officially released. The results to date of Government ownership of our railroads, telephones, cables, etc., are not such as to arouse any great enthusiasm for further experiments along that line.

6. It is the understanding of the writer that, in the event of the ownership of these patents passing to the Chemical Foundation, the latter executes whatever licenses may be requested by the Government to enable the latter to itself manufacture or to contract with manufacturers without payment of royalties or to make whatever other arrangements the Government may deem necessary to safeguard its rights.

7. As a considerable number of patents already have been transferred to the Chemical Foundation, the point is raised whether a change of policy now may not introduce difficulties in the event that any of the patents taken over by the Government bear vitally upon those already held by the Chemical Foundation.

8. In the war experience of the writer as a member of the National Research Council, of the War Industies Board, and of the Army, he has encountered

no more patriotic group of citizens than our chemical manufacturers. Almost without exception they have done everything in their power to help their country. Many of them are thousands of dollars poorer as the result. A few, I understand, have been financially ruined through delays in securing from the Government money justly due them. In the contracts of the Chemical Warfare Service for gas masks, the Goodrich Rubber Company was the only one making certain of these parts at first. When later it became necessary to make a greatly increased number, and in order that the Government should not be dependent upon a single source of supply, the Goodrich Rubber Company voluntarily communicated to its competitors, the Goodyear Tire and Rubber Company and the U. S. Rubber Company, the results of its experience and experiments, as well as cost data, to enable the latter to bid intelligently for portions of the contract. Other similar cases might be cited.

9. On the whole, my feeling is that if the alternatives are (1) extensive use by a "chemical trust" or (2) restricted use because of Government ownership, that the former alternative is preferable.

10. While what is written above refers particularly to chemical patents, if other patents of interest to the Chemical Warfare Service are to be taken over by any group of Civilians, it would appear that the Chemical Foundation, Inc., is the appropriate one for the purpose.

(Sgd.) MARSTON T. BOGERT,
Colonel, Chemical Warfare Service,
U. S. Army.

DEFENDANT'S EXHIBIT No. 306.

P. S. & T. 072-15 M. P. B. 072/23 (Enemy Owned)

Room 2541,
Munitions Bldg.

WAR DEPARTMENT
PURCHASE, STORAGE, AND TRAFFIC DIVISION
GENERAL STAFF
WASHINGTON

April 21, 1919.

From: Chief, Patents Section, Purchase Branch, Purchase, Storage, & Traffic Division.

To: Munitions Patents Board.

Subject: Seizure of Patents by the Alien Property Custodian Covering Inventions of Value to the War Department.

1. With reference to a communication from this office to the Munitions Patents Board, dated April 18, 1919, with reference to the above matter, there is transmitted herewith for the consideration of the Board letter of even date herewith from Colonel Marston T. Bogert, Chemical Warfare Service, dealing particularly with the disposition to be made of chemical patents.

2. This communication also should be considered in connection with the other papers bearing upon this matter in determining the policy of the War Department with reference to chemical patents and other patents seized by the Alien Property Custodian.

By authority of the Chief, Purchase, Storage & Traffic Div.

(Sgd.) A. M. HOLCOMBE,
Major, Ordnance, U. S. A.
Chief, Patents Section, Purchase Branch,
P. S. & T. Div.

1 Inc.
P. S. & T. 072-15

DEFENDANT'S EXHIBIT No. 307.

Munitions Bldg.
Room 2541

AMH/ljl

May 1, 1919.

MEMORANDUM FOR COL. HILTON.

Subject: Alien Enemy Patents.

1. I have considered your query with reference to Major McMeekin's memorandum of April 28, 1919, enclosing communication from the Chief Metallurgist of the Bureau of Mines with reference to chemical, mill and metallurgical patents submitted to him for recommendation as to their value to the Government.

2. An examination of these patents with a view to ascertaining their real value, both from the standpoint of the subject matter shown and described and from the standpoint of the protection afforded by the claims of the patents, would, of course, be a very laborious undertaking, and the Bureau would hardly be warranted in undertaking it.

3. Judging from the titles of the patents listed, the greater number appear to relate to commercial activities, and are not peculiar to the needs of the Government. The principal effect of the United States securing these patents would seem to be to release private owners from any liability they may be under by reason of past use of the inventions, and to permit the unrestricted use of them in the future.

4. There is no machinery existing in the Government at the present time for administering patents—that is, for granting licenses to manufacturers and filing suits against unlicensed users. The Attorney General would have to conduct any litigation which might be desirable for enforcing the rights of the United

States under the patents, and probably an Act of Congress would be required to secure the necessary funds.

5. In other words, it would be impracticable for the United States to attempt to enforce these patents, even against the former German owners if they should desire to import the patented articles into this country in competition with the United States or its licensees. Moreover, it is doubtful if the United States is authorized to grant exclusive licenses or to refuse to grant licenses to citizens requesting them.

6. If the Peace Conference should authorize the Alien Property Custodian to take over enemy-owned patents for the benefit of the United States, then the question will arise—What can we do with these patents? But unless the Peace Conference does specifically authorize the taking over of these patents, I doubt if it is good policy to secure them wholesale under the provisions of the Trading With the Enemy Act and have them transferred to the various Departments of the Government.

7. Such few patents as may be peculiar to the military needs of the War Department may be secured under the Trading With the Enemy Act without criticism, as the commercial value of such patents, outside of the use the Government has made or will make, would probably be practically nil, and the nominal consideration proposed would be sufficient to validate the transfer as a sale.

(A. M. HOLCOMBE)
Major, Ord., U. S. A.

DEFENDANT'S EXHIBIT No. 308.

Patents
McMullenOek
JMG 072

The Chairman,
Committee on Patents,
United States Senate.

Sir:

I have been directed by the President to bring to your attention the question of revising our patent laws prior to a revival of the Patent Treaty of 1909 with Germany.

Senate Bill 1838, which was reported out of the Committee some time last summer and later recommitted for public hearings, is thought to contain the legislation necessary to protect the American industrial interests incident to the revival of the above mentioned treaty.

This bill is understood to have been recommitted for public hearings because of objection having been expressed that its provisions as reported by the Committee, were discriminatory. To meet this objection an amendment to that bill was, at the request of Senator Stanley of your Committee, furnished him under date of July 19, 1921, a copy of which amendment is transmitted herewith.

At about the time the United States entered the war, and in some respects two years prior to that time, it was developed that many of the major enemy investments in this country were a far-reaching and effective plan designed to control our basic industries. It is unnecessary here to detail the facts as they were found to exist in the metal, textile, wireless, magneto, fur, optical, chemical and other industries, but it is sufficient to state that as a result of those investments

and the restricted status of German owned and controlled American patents, the United States found itself in a serious situation looking to the immediate production of a great many of the important items falling under the above classifications, which were absolutely essential to the conduct of the war. Indeed the situation was so serious that the War Department found it necessary to join in an effort to secure legislation authorizing the seizure of enemy owned patents, which was later realized in the form of the Trading with the Eenemy Act and its amendments.

The War Department has a large amount of data which I think if presented will show that the situation was largely due to the concentrated efforts of the Germans covering a period of a number of years before the war in the securing of United States patents, which were unworked and unlicensed in the United States, and many of which patents were found not to fully disclose the invention as required by statute when our technical experts attempted to practice them and attain the benefits for the United States in the conduct of the war.

I realize that there may be a great deal of objection to establishing a working clause in our patent laws, and I fully appreciate that there are many angles to the situation, however, it is my view that the main object in the mind of every inventor is that he will some day during the life of his patent receive some reward for the product of his brain, and if we now provide a statute which will insure the working of a patent which the public interests demand and for which the patentee is assured of reasonable compensation, such action cannot be considered as detrimental to the property rights of our citizens or a just cause for complaint by foreign patentees.

I am inclined to think that the fundamental principle of our patent law is not so much to create prop-

erty for the benefit of the individual only, but is rather for the purpose of encouraging individuals to disclose their ideas for the benefit of the country as a whole, and if in the course of events the public interest demands the use of that property, created by the granting of the monopoly embodied in a patent, the public has the right to the use of the new discovery, provided of course that reasonable and just compensation is awarded the patentee therefor.

I understand that there are incidents where some of our large industries and individuals purchased patent rights for the sole purpose of preventing their introduction to public use. There may be occasions when it might be argued that such action is reasonable and just, in the interest of vested capital, but on the whole I am inclined to think that it is selfish and not in the public interest.

The War Department is conversant with the industrial situation as it existed at the beginning of the war, and the fact that it had to go into the market and purchase unprecedented quantities of supplies of the most varied character, and that the situation with respect to the monopoly of the various classes of supplies was brought to the attention of the War Department in a very marked degree, emphasizes the necessity for legislation looking to the prevention of such a condition again arising.

National defense, as viewed in the prospective, is largely a matter of a highly developed, well balanced industry, and it was to attain this situation that the War Department found it necessary to delay as long as it did in really effectively getting into the war. There was no great difficulty in gathering together the men and training them in a comparatively short time, but the difficulty of establishing new industries to supply the munitions of war was a most stupendous task,

and the various monopolies in the various classes of industries heretofore pointed out were one of the principal contributing causes to the United States not being until practically the end of the war in a position to furnish all the necessary supplies and munitions essential to the conduct of a successful, modern war.

It is my view which I cannot urge too strongly that the highest duty of a country is to maintain itself in a condition to insure its continued existence as a state, and while it is the primary duty of the War Department to foresee the requirements for national defense and to present to Congress information as it may arise from time to time touching upon that subject, I feel also that it is not inconsistent with my duties to also point out when occasion arises and the circumstances touch the national defense, the question as it affects our national industries.

Having in view this broader vision of national defense, and realizing that tariffs alone can never protect our industries under the present condition of our patent laws whereby such industries may be monopolized by foreign states through the medium of foreign owned patents, which remain unworked and unlicensed in the United States, I take this occasion under instructions from the President to urge upon you the necessity for the legislation embodied in Senate Bill 1838, as suggested in the amendment forwarded with my letter to Senator Stanley under date of August 19, 1921.

To summarize, I think it may be said that foreign patentees should be put upon notice that the United States does not propose to allow foreign inventors to come here and acquire monopolies in certain branches of industries which will force this country, when it has occasion to go to war in defense of established principles of a free and untrammeled govern-

ment, to at that late date start the development of industries necessary to its defense.

Sincerely yours,
J. M. WAINWRIGHT,
The Acting Secretary of War.

Encs.—
Copy letter to Sen. Stanley, 8/19/21,
Copy amendment to Sen. Bill 1838.

DEFENDANT'S EXHIBIT No. 309.

(Copy)
WAR DEPARTMENT
PURCHASE, STORAGE AND TRAFFIC DIVISION
GENERAL STAFF
WASHINGTON
January 30th, 1920.

Mr. Robert C. Goldstein,
Chief Division of Patents,
Alien Property Custodian,
16th & P Sts., N. W.,
Washington, D. C.

My dear Mr. Goldstein:

It occurred to the writer that you might be interested to learn informally that Ordnance has made use of patents No. 12,927 improvements on hand fire arms, owned by the Deutsche Waffen and Munitionsfabriken, of Berlin, Germany, to such an extent as to have incurred a liability for royalties of something like $800,000 which somewhat substantial amount will be saved to the United States Government because of the seizure of the above mentioned patent by the Alien Property Custodian.

Yours very truly,
(Sgd.) CHARLES E. YEKMAN,
Patent Section
Purchase, Storage & Traffic
War Department.

DEFENDANT'S EXHIBIT No. 310.

(Copy of a Copy)
WAR DEPARTMENT

In reply refer
to S D 7624 March 19, 1921

From: The Secretary of War
To: The Secretary of the Navy
Subject: Patents and Copyrights—License assigned to Navy from Alien Property Custodian

1. In reply to your letter of January 21, 1921, on the above subject, you are advised that the list enclosed therewith was sent to the Chiefs of the several Supply Branches of the Army with directions to prepare and submit lists of such patents as should be included in a license to be issued to the War Department.

2. The Supply Branches were all agreed that any or all of the patents listed might be valuable to them in their work, and that it is impossible to determine in advance just which of them might be desired.

3. It is therefore requested that the entire list of patents cited be included in a license to the War Department.

4. It is also requested that one hundred copies of the list be furnished the War Department in order that they may be distributed to the sub-divisions of the Supply Branches engaged in development and research work.

P. C. MARCH,
Acting Secretary of War.

DEFENDANT'S EXHIBIT No. 311.

(Copy of a Copy)

In reply address
Bureau of Ordnance, Navy Department,
and refer to No. 37649/6 (S1)-O
ALB

NAVY DEPARTMENT
BUREAU OF ORDNANCE
WASHINGTON, D. C.

March 24, 1921

Attention—Dr. Van Doren

Subject: Patents and Copyrights—License from Chemical Foundation, Inc.

Reference (a) Letter of Chemical Foundation, Inc. to Bureau of Ord. dated Jan. 17, 1921.

Inclosure (herewith): (A) Copy of letter of March 19 from War Dept. to Secretary of Navy.

Sir:

The Bureau is forwarding herewith copy of a letter this date received from the War Department.

You will please note that the War Department desires a complete blanket license of all patents held by the Chemical Foundation, Inc.

The Navy Department has endeavored to select from the list of patents forwarded with your letter, reference (a), those which at the present time it seemed advisable to hold a license under. However, in view of the request made by the War Department, the Navy Department believes that, if practicable, a license covering all of the patents held by the Chemical Foundation, Inc. should be given to the Government of the United States as represented by the Secretary of the Navy and his successors in office.

This Bureau would be pleased to receive from the Chemical Foundation, Inc. such a license.

Your attention is invited to the 4th paragraph of Inclosure (A), letter of the Secretary of War.

Very truly yours,
(Sgd.) CHAS. B. McVAY, JR.

Chemical Foundation, Inc.
81 Fulton Street,
New York, N. Y.

CHAS. B. McVAY, JR.,
Rear Admiral, U. S. Navy,
Chief of the Bureau of Ordnance.

DEFENDANT'S EXHIBIT No. 312.

(Copy of a Copy)

In reply address
Bureau of Ordnance, Navy Department
and refer to No.
37649/8 (S1)-O
ALB

NAVY DEPARTMENT
BUREAU OF ORDNANCE
WASHINGTON, D. C.

March 30, 1921.

Subject: Patents and Copyrights—License from Chemical Foundation, Inc.

Reference: (a) Letter of Chemical Foundation to Bureau of Ord. dated March 28, 1921.

Sir:

Receipt of your letter of March 28 in reply to the communication of this Bureau of March 24th is acknowledged.

A copy of your communication has been forwarded to the War Department for its information.

The Bureau appreciates the amount of work and

time involved in the preparation of the license referred to and thanks the Chemical Foundation for its consideration in the preparation of this schedule.

In regard to the hundred copies requested by the War Department, it will be quite convenient to receive these when the new list has been completed.

The Chief of Bureau will be pleased to confer with Mr. Van Doren at such time as he may visit Washington,

Very truly yours,

(Sgd.) CHAS. B. McVAY, Jr.,
CHAS. B. McVAY, Jr.,
Rear Admiral, U. S. Navy,
Chief of the Bureau of Ordnance.

The Chemical Foundation Incorporated,
81 Fulton Street,
New York, N. Y.

DEFENDANT'S EXHIBIT No. 313.

MINUTES OF MEETING OF
DECEMBER 17, 1918.

A special meeting of the Munitions Patents Board was held Tuesday, December 17, 1918, 2:30 p. m. o'clock State, War & Navy Bldg., Mr. Thomas Ewing, Chairman, presided, Major A. M. Holcombe and Mr. Pickens Neagle were present.

Mr. Ewing reported the receipt of the affidavits from the Signode System, Inc.

Contract form for development work submitted by Lieut. O. W. Kennedy, Engineer Corps, Searchlight

Investigation Section, was considered. Changes were made as set forth in letter dated December 18th, 1918, to Lieut. Kennedy (M. P. B. 072.31/15).

Major R. H. Young, Bureau of Aircraft Production, Mr. J. W. Rich, Bureau of Aircraft Production, and Mr. Warden, Federal Trade Commission, took part in a discussion as to whether either of the Departments should confer with the Alien Property Custodian respecting licenses under patents that he may be selling, or the Federal Trade Commission respecting the granting of licenses to enemy owned patents. It was concluded that nothing could be done by either the Alien Property Custodian or the Federal Trade Commission that would advantageously alter the position which the Government now occupies respecting enemy owned patents, and in the opinion of the Board the taking of a license under Section 10 of the Trading With The Enemy Act would operate to take the matter from under the terms of the Act of July 1, 1918, No. 182, 65th Congress. This would be disadvantageous to the Government.

Meeting adjourned at 5:00 o'clock.

(Sgd.) K. S. EBERLE,
Secretary to the Board.

Approved:
(Sgd.) THOMAS EWING,
Chairman.

DEFENDANT'S EXHIBIT No. 314.

April 23, 1919.

Major Holcombe stated the result of a conference between Hon. Thomas Ewing, Chairman of the Munitions Patents Board, Lieut. S. R. Graves of the Ordnance Dept., Mr. Ramsey Hoguet, Patent Counsel to the Alien Property Custodian and himself at 160 Broadway, New York City, April 22, 1919 as follows:

"The following papers were submitted to Mr. Ewing in advance of the conference for his information:

Capt. Swenarton's letter of April 16, 1919 to Lieut. Sheldon H. Graves.

Major Holcombe's letter to Mr. Dorr, April 18, 1919.

Mr. Dorr's reply thereto, April 18, 1919.

Lieut. Grave's 1st Ind. on Capt. Swenarton's letter.

Letter from Col. Bogert to Major Holcombe, April 21, 1919.

Mr. Ewing stated that, in the absence of some express provision of the Peace Treaty, it is his opinion that the Alien Property Custodian can not dispossess Germans of their rights under U. S. patents except by a bona fide sale conformable to the provisions of the Federal Trading with the Enemy Act. Mr. Ewing stated that no transfer to a bureau of the Government or to a corporation organized by officers of the Government for the purpose of holding title for the benefit of the Government would be conformable to that Act. In order that a sale may be conformable to the Act, it must appear that the price was approved by disinterested persons competent to judge of the value of

the patents, and that the price must represent a fair value.

Mr. Ewing stated that he sees no reason why the United States should acquire full title to enemy-owned patents, as it is only interested in extinguishing such liability as it may be under. In some cases it may be desirable to procure a license, in order to continue manufacture for the future, particularly with reference to patents which relate exclusively to war materials and have little commercial value. As to the greater number of enemy-owned patents, the commercial value is probably greater than the military value, and the effect of the United States acquiring title to such patents would be, principally, to release private concerns from liability for past infringement and future use. Mr. Ewing thinks there is no reason why the United States should assume to protect private concerns, and that it is preferable to leave such concerns to look out for themselves.

Mr. Ewing seemed inclined to favor the War Department taking advantage of any provisions which may have been or may be put into the Peace Treaty authorizing the Alien Property Custodian to dispossess Germans of their patent property; although he stated it to be his personal opinion that it would be bad policy to put a provision in the Peace Treaty authorizing such action. His view is that the War Department should keep clear of the matter, and that the Alien Property Custodian should assume the entire responsibility for whatever action is taken.

Mr. Hoguet stated that the Alien Property Custodian has no particular interest, one way or the other, in the disposition made of German-owned patents of interest to the War Department. He stated, further, that the Chemical Foundation had no desire to take over patents generally outside of those relating to chemical matters, but that it would take over

other patents if the War Department or the Navy Department should urge it strongly to do so. He stated that the directors had not adopted any policy with reference to licensing the United States, although it is expected that a free license will be given to the United States, but not to contractors manufacturing for the United States.

Mr. Hoguet further stated that he would await a request from the War Department before taking further action with reference to patents already seized relating to war inventions.

Major Holcombe requested Mr. Ewing to formulate his ideas in a communication which can be presented to the Secretary of War along with the other papers bearing on the matter, for consideration, in order that some policy may be adopted with reference to the disposition to be made of enemy-owned patents relating to war materials.

The organization of a corporation similar to the Chemical Foundation for the purpose of taking over munitions patents and other patents non-chemical in nature of interest to the War Department was not discussed in detail, because of Mr. Ewing's opinion that a transfer to such a corporation would (if controlled by the War Department) be open to the same objections as a transfer to the War Department itself."

After further consideration, the Board is of opinion that the War and Navy Departments should cooperate with the Alien Property Custodian in the selection of patents; and that the Alien Property Custodian should continue, conformably with law, the seizure and disposal of patents of interest to the two Departments; and further, that such patents should not be transferred to either of the Departments unless provision can not be made by the Alien Property Custodian for transfer to private parties at whose hands

the interests of the Government would receive proper consideration.

Meeting adjourned at 5:00 p. m. o'clock.

(Sgd.) K. S. EBERLE,
Secretary to the Board.

Approved:
(Sgd.) PICKENS NEAGLE,
Acting Chairman.

DEFENDANT'S EXHIBIT No. 315.

MINUTES OF MEETING OF
FEBRUARY 10, 1919.

At a regular meeting of the Munitions Patents Board, held Monday, February 10, 1919, at 2:30 p.m. o'clock, State, War, & Navy Bldg., Mr. Thomas Ewing, Chairman, presided and Major A. M. Holcombe and Mr. Pickens Neagle were present.

• • • •

The Board considered the reply of the Judge Advocate General to its recommendation dated January 28, 1919 (M.P.B.072.3/2—Grant & Morse) that authority be given the Bureau of Aircraft Production to furnish certain information stated to be in that Bureau's possession asked for by Mr. Vernon M. Dorsey in his letter of January 15, 1919 (M.P.B. 072.3/1—Grant & Morse). The Judge Advocate General was of the opinion that the information asked for has a bearing on a claim and in view of the policy of the Department should be withheld. The policy referred to is based on Army Regulations, Par. 824.

As it is purely a matter of policy, the information asked for not coming within any statutory restrictions known to the Board upon furnishing infor-

mation to claimants, the policy indicated by the Judge Advocate General seemed to be unwise.

The Board recommended that the information asked for be transmitted to Mr. Dorsey by the Bureau of Aircraft Production, and a letter to this effect was written to the Secretary of War for approval (M.P.B. 072.3/3—Grant & Morse).

* * * *

Mr. W. T. Gordon, of the office of the Alien Property Custodian, called and the Board discussed the questions arising in connection with the sale by the Alien Property Custodian of enemy owned patents and the right to collect for existing claims against the United States Government under the patents. The suggestion was made that Section 3477 of the Revised Statutes prohibits the assignment or sale of unliquidated claims against the United States. (See Act of July 29, 1846, Chap. 66, 9 Stats., 41; Act of Feb. 26, 1853, Chap. 81, Section 1, 10 Stats., 170, Prohibiting transfer or assignment of any claim upon the United States, Etc.)

Mr. Gordon stated that he would report the suggestion to Mr. Palmer, the Alien Property Custodian.

A communication dated February 7, 1919 (M.P.B. 072.6/8—Enemy Owned) from the Chief of Ordnance to the Assistant Secretary of War with reference to the sale of enemy owned patents forwarded to the Board for action and report by Mr. Dorr was read by Major Holcombe.

The Board was of the opinion that no sufficient reason had been shown to cause it to change its recommendation of Dec. 17, 1918 with reference to the policy of the War and Navy Departments to be followed in connection with the sale of enemy owned patents.

The letter was referred to Major Holcombe for investigation and report.

* * * *

The reply of the Scovill Mfg. Company dated Feb. 6, 1919 to the proposal of the Board dated January 28, 1919 suggesting the payment of $168,750.00 in full settlement of all claims under the two Goss patents and the three Lissak patents and for the assignment of all of these patents to the Government was considered. The Scovill Company stated the amount of their offer of January 20, 1919 of $218,420.09 was a small portion of the saving to the Government through infringement of the Goss patent and furthermore the infringement permitted the Government to secure a volume of production which was necessitated by its requirements and which would have been hardly possible under non-automatic methods and requested that their proposal be reconsidered.

It was noted that no reply was made to the suggestion of the Board that the item of $30,420.09 for machinery was not proper to be included as the Government is not interested in acquiring the machinery. No reason was seen by the Board for departing from the royalty of $.25 per thousand clips. Major Holcombe reported, however, that the figures upon which the royalty was based were being checked. As the amount of $25,000.00 allowed by the Board for the assignment of the patents is more or less an arbitrary figure, the Board was willing to consider any reasons that might be submitted for changing it. A letter to this effect was written the Scovill Mfg. Co. (See M.P.B. 072.3/11 Scovill Mfg. Co.)

* * * *

Major Holcombe presented a confidential communication from the Chief of Ordnance dated February 7, 1919 relative to the Pedersen patent rights.

In view of the uncertainty of the possibility of maintaining secrecy on account of disclosures already made, the Board was of the opinion it was desirable to have a statement of the present status of the matter, especially the extent to which disclosure of the invention had been made by the filing of patent applications in this country and abroad and by the issue of patents thereon and suggested if no disclosure of the invention had been made outside of the United States Patent Office, the Board would, if requested, recommend to the Secretary of War that steps be taken to maintain the United States patent application in secrecy and acquire foreign rights and withhold the filing of applications for foreign patents. A letter stating the above was written to the Chief of Ordnance (M.P.B. 072.1/2—Pedersen Patent Rights).

* * * *

Mr. Neagle reported to the Board that the question as to whether the owners of the patents are entitled to compensation from the Government on account of submarine signalling on German vessels taken over by the Government or whether the licenses in Germany of the American Company are the proper parties through whom the matter of compensation must be settled is before the Navy Department and will be brought to the attention of the Board at the next meeting.

* * * *

Mr. Neagle reported that the question as to whether Jones-Motroler Company is entitled to royalty on tachometers for flying machines is under consideration by the Bureau of Steam Engineering and will be presented to the Board later. The Company claims $5.00 royalty, the cost of the tachometers being about $16.00 but Steam Engineering is inclined to

think the owners of the patents are not, under the circumstances of the case, entitled to royalty.

* * * *

The matter of the allotment of funds for payment of fees in overseas countries was presented by Major Holcombe (M.P.B. 072/8—Overseas), together with decision of the Comptroller of the Treasury dated January 20, 1918 and the indorsement of the Assistant and Chief Clerk of the War Department thereon.

It was decided by the Board to ask for an allotment of $1200.00 from the appropriation "Contingencies of the Army 1919" to be used for the payment of fees required for obtaining patents abroad upon inventions made by officers and employees of the United States and actually used overseas, where the filing of such applications is necessary to protect the interests of the United States.

The Board decided to recommend that Major Delbert H. Decker be designated to act for the Munitions Patents Board as its Assistant and representative overseas in matters within the jurisdiction of the Board.

A letter was written to the Secretary of War asking his approval of the allotment. (M.P.B. 072/9—Overseas).

If the allotment recommended is approved by the Secretary, Major Holcombe was requested to notify the proper parties of the approval, and cable Major Decker that the funds are available.

* * * *

The meeting adjourned at 4.30 p.m. o'clock.

(Sgd.) K. S. EBERLE,
Secretary to the Board.

Approved:
(Sgd.) THOMAS EWING.
Chairman.

DEFENDANT'S EXHIBIT No. 316.

E. I. DU PONT DE NEMOURS & COMPANY

EXPENDITURES FOR RESEARCH WORK ON PRODUCTS LICENSED FROM THE FEDERAL TRADE COMMISSION

1916 to Jan. 1, 1923

LICENSE NO. 19

PHENYLGLYCINE AND INDIGO INTERMEDIATES			
J-15-31-11	Phenylglycine	$10,980.92	
J-25-14	Study of Analytical Methods—Formaldehyde	608.05	
J-26-1	Plant Investigation — Chloracetic and Phenylglycine Plant	1,182.29	
J-30-1	Chloracetic Acid—Partial Chlorination	25,482.32	
J-30-9	Chloracetic Acid—Distillation	644.27	
J-31-11	Phenylglycine	44,884.94	
J-31-11-A	Phenylglycine — Chloracetic Acid Method	9,784.12	
J-31-11-1	Phenylglycine—Testing Ex'l. Sta. Cyanide	116.85	
J-31-11-3	Phenylglycine—Recovery of By-Products	123.99	
J-31-17	Phenylglycine Trichlorethylene—Synthesis	2,255.36	
J-31-11-B	Phenylglycine—Alcohol Method	1,512.63	
E-391-S	Organic Research—Phenylglycine	10,352.73	
R-128-F-7	Phenylglycine—O-Carboxylic Acid	10,583.91	118,512.38
INDIGO			
J-54	Indigo and Derivatives—Plant Process	67,387.96	
J-54-1	Indigo and Derivatives—Synthesis	10,187.89	
J-54-2	Indigo—Oxyethylaniline Method	2,154.82	
J-54-2-SW	do Semi-Works	2,371.40	
J-54-4	do Sodamide	1,211.23	
J-54-8	Indigo—Study of Melt	7,167.08	
J-54-9	do Powder	764.02	
J-54-10	do Caustic Recovery	1,321.76	
J-15-54	Indigo and Derivatives — Plant Process	9,376.20	
J-25-20	Study of Analytical Methods—Indigo	2,493.95	
E-391-F-14	Organic Research—Dyes—Indigo	9,630.60	$114,066.91

LICENSE NO. 18-A

SODIUM HYDROSULPHITE

R-128-B	Manufacture of Sodium Hydrosulphite	$43,039.61	
R-128-B-2	Manufacture of Sodium Hydrosulphite	487.37	
J-15-65-2	Sodium Hydrosulphite	13,797.71	
J-65-2	do	1,752.01	$59,076.70
	Expenditures for Research Work on Products Licensed from the Federal Trade Commission		$291,655.99

DEFENDANT'S EXHIBIT No. 317.

E. I. DU PONT DE NEMOURS & COMPANY

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 327

ANTHRACENE

J-15-33-3	Anthracene	2 814 57	
J-33	Intermediates—anthracene series	267 30	
J-33-3	Anthracene	29 617 91	
J-33-3-A	Anthracene residues	1 303 29	
J-33-3-B	Anthracene purification—hydraulic pressing	169 66	
J-33-3-C	Anthracene—grinding	112 62	
R-128-G	Derivatives of anthracene—general	1 410 88	35 696 23

ANTHRAQUINONE

J-15-33-4	Anthraquinone	2 847 75	
J-25-15	Study of Analytical methods Anthracene & Anthraquinone	2 044 41	
J-33-4	Anthraquinone	26 713 39	
J-33-4-A	Anthraquinone—Sublimation	79 49	
J-33-4-B	" —Sodium Nitrate process	402 74	
J-33-8	Anthraquinone—Air Oxidation	8 860 93	
J-33-9	" —Chromium Recovery	9 701 58	
J-33-11	" —Liquid Condensation	17 980 60	
R-128-G-1	"	5 614 62	74 245 51

ANTHRAQUINONE BETA SULPHONIC ACID

J-15-33-1	Silver Salt	5 333 06	
J-33-1	Silver Salt	33 615 33	
J-33-7	Anthraquinone Sulphonic Acid—Separation	3 698 00	42 646 39

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION
1916 to JAN. 1, 1923
LICENSE NO. 327 (Continued)

BETA AMINO ANTHRAQUINONE

J-33-10	Beta Amino	8 814 67	
J-33-10-A	Beta Amino Anthraquinone—New Process	4 249 06	
J-33-10-B	Betamine	765 74	
J-15-33-10	b-Amino anthraquinone	872 67	14 702 14

PONSOL BLUE R

J-15-53-1	Ponsol Blue-R	6 914 46	
J-53-1	Ponsul Blue-R	16 821 04	
J-53-1-A	Ponsul Blue—Pressure and Oil Fusions	10 180 37	
J-28-18	Melting Points of Caustic potash sodium acetate mixtures	405 26	
J-53-1-B	Ponsul Blue-R—New Process	940 87	
J-53-2-A	" " R—Solubility Studies	1 163 47	
J-53-34	" " -RS	7 810 87	
J-53-A	Pasting Ponsul Dyes	1 643 54	45 879 88

PONSUL BLUE G

J-15-53-2	Ponsul Blue G	8 179 07	
J-15-53-3	Ponsul Blue BCS	1 536 14	
J-53-2	Ponsul Blue G	2 078 16	
J-53-2-SW	" " "—Semi Works	5 94	
J-53-2-P	Pasting Ponsul Blue G	18 726 21	30 525 52

PONSUL YELLOW G

J-15-53-5	Ponsul Yellow G	12 122 51	
J-53-5	Ponsul Yellow G	15 789 31	
J-53-5-P	Pasting Ponsul Yellow G	1 429 58	29 341 40

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 328

BENZANTHRONE

J-15-33-12	Benzanthrone	1 565 45	
J-33-12	Benzanthrone	6 377 49	
J-33-12-A	Benzanthrone — Preparation of Anthranol	1 072 03	9 014 97

PONSOL DARK BLUE BR

J-15-53-4	Ponsol Dark Blue BR	5 771 43	
J-53-4	Ponsol Dark Blue BR	7 479 13	
J-53-4-A	Ponsol Dark Blue BR—Pressure and Oil Fusions	10 231 22	
J-28-19	Stability of Benzanthrone colors	469 26	23 951 04

PONSOL GREEN B

J-15-53-10	Ponsol Green B	5 585 44	
J-53-10	Ponsol Green B	17 627 95	
J-53-10-P	Pasting Ponsol Green B	1 041 70	24 255 09

LICENSE NO. 329

PONSOL VIOLET R

J-15-53-8	Ponsol Violet R Extra	1 968 97	
J-53-8-A	Ponsol Violet R Caustic Potash Recovery	641 99	
J-53-8	Ponsol Violet R	7 905 43	
J-53-8-B	Ponsol Violet R Oil Fusions	4 935 78	15 452 17

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 330

PONSOL VIOLET RR

J-15-53-9	Ponsol Violet RR Extra	5 314 61	
J-53-9	Ponsol Violet RR	8 219 46	
J-53-9-P	Pasting Ponsol Violet RR Extra	1 998 08	15 532 15

LICENSE NO. 333

PONSOL BLUE RP

J-15-53-34	Ponsol Blue RP	799 09

LICENSE NO. 400

PONSOL CLARET B

J-53-11	Ponsol Bordeaux B	10 779 52

LICENSE NO. 402.

PONSOL VIOLET RN

J-53-30	Ponsol Violet RN	1 430 48

LICENSE NO. 404

PONSOL PINK B

J-53-32	Ponsol Pink B.	185 05

LICENSE NO. 382

PONSOL BLUE 3G

J-53-36	Ponsol Blue 3G	993 80

LICENSE NO. 383

PONSOL RED VIOLET 2RN

J-53-31	Ponsol Red Violet 2 RN	4 125 56

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 389

PONSOL GOLDEN ORANGE G and 2RT			
J-53-6	Ponsol Golden Orange R	4 816 88	
J-53-7	Ponsol Golden Orange RRT	6 326 04	11 142 92

LICENSE NO. 398

ORTHO CHLOR PARANITRANILINE		
J-31-78	Ortho-chlor-para-nitraniline	1 224 96
LITHOSOL VERMILLION G		
	No expenditure prior to Jan. 1, 1923	0 00

LICENSE NO. 399

DINITRO STILBENE DISULPHONIC ACID		
J-41-3-A	Diamino stilbene-dinitro-stilbene method	9 526 59
ORANGE OR BROWN STILBENE DYE		
	No expenditure prior to Jan. 1, 1923	0 00

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 249

SULPHOGENE YELLOW GG

J-15-52-13	Sulphogene Yellow GG	8 102 12	
J-52-13	Sulphogene Yellow G	5 849 38	13 951 50

LICENSE NO. 365

SULPHOGENE BROWN R

J-52-16	Sulphogene Brown RB	21 186 74	
J-52-47	Sulphogene Brown RBNNX	1 871 23	23 057 97

LICENSE NO. 334

SULPHOGENE BORDEAUX B

J-15-52-20	Sulphogene Bordeaux B	4 108 10	
J-25-26	Study of Analytical Methods—Sulphogene Bordeaux	1 637 73	
J-52-20	Bordeaux B	9 053 27	
J-52-20-A	Bordeaux B-Nitrosophenol Process	2 810 45	
J-52-25	Sulphogene Brilliant Bordeaux RR	641 04	18 250 59

LICENSE NO. 366

SULPHANTHRENE PINK FF

J-52-53	Sulphogene Hydron pink	3 221 87

LICENSE NO. 368

HYDRON ORANGE, VIOLET, CRIMSON, BROWN

J-52-54	Sulphogene Hydron Brown	1 259 95	
J-52-55	Hydron Bordeaux	402 92	1 662 87

LICENSE NO. 387

LITHOSOL BORDEAUX B

J-43-108	Lithosol Bordeaux B	1 215 18

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION

1916 to JAN. 1, 1923

LICENSE NO. 314

CARBAZOL			
J-25-28	Study of Analytical Methods—Carbazol	$1,725,38	
J-32-2	Carbazol	12,192.20	
J-33-2-1	do —Sublimation	720.72	
J-33-2-2	do —Distillation	636.46	$15,274.76
HYDRON BLUE R			
J-52-12-A	Hydron Blue R	47,188.04	

LICENSE NO. 364

HYDRON BLUE G			
J-52-12-B	Hydron Blue G (New)	25,374.91	

LICENSE NO. 332

BETA HYDROXY NAPHTHOIC ACID			
J-15-32-24	Beta Hydroxy Naphthoic Acid	5,874.08	
J-32-24	do	21,869.12	27,743.20
DUPONT NAPHTHANIL AS AND BS			
J-16-32-A-22	Dupont Naphthanil for Printing	1,085.51	
J-32-29	Naphthol AS	6,902.25	
J-32-34	Naphthol AN	740.77	8,728.53

LICENSE 381

PONTACYL FAST LIGHT YELLOW 2G AND 3G			
J-31-26	Phenylhydrazine Sulphonic Acid	1,452.21	
J-34-1	1-Sulpho Phenyl 3-Methyl 5-Pyrazolone	5,943.67	
J-31-76	Phenylhydrazine — B-Chlor-M-Sulphonic Acid	527.67	
J-31-77	1-Ortho-Chlor-Meta-Sulpho-Phenyl 3-Methyl 5-Pyrazolone	562.84	
J-31-A-29	1-Meta - Sulpho - Ortho - Tolyl 3-Methyl 5-Pyrazolone	411.65	
J-43-286	Pontacyl Light Yellow 3G	553.16	9,451.20

LICENSE NO. 331

PONTACHROME BLACK 6BX			
J-15-43-103	Pontachrome Black 6BX	$1,858.43	
J-43-103	Pontachrome Black 6BX	21,744.78	$23,603.21
1-AMIDO—2-NAPHTHOL 4-SULPHONIC ACID			
J-15-32-19	1-2-4 Acid	5,251.23	
J-32-19	1-2-4 Acid	14,439.04	
R-128-F-22	1-Amino 2-Oxy 4 Sulphonic Acid	792.32	$20,482.59
TOTAL EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION			$568,093.93

DEFENDANT'S EXHIBIT No. 318.

Literature Distributed by The Chemical Foundation, Inc.

Deft's Ex. No.	Sent	Name of Article	To Whom Sent	Amount
	—1—			
301	8/7/19	Aims and Purposes of The Chemical Foundation:	Agricultural Agents	1,959
			Chambers of Commerce	937
			City Engineers	3,750
			City Mayors	2,750
			Congressmen	431
			Consumers and Business Men	56,068
			Drug and Chemical Mfrs.	6,365
			Educators	9,453
			Government Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Libraries and Librarians	1,452
			Lime Mfrs.	129
			Members of American Legion	329
			Newspaper Editors	2,275

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Paint and Oil Mfrs.	1,609
			Paper Mills	1,051
			Prominent Men	4,831
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	15,065
			Senators	96
			Stock Holders and Licensees	271
			Students	10,130
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	17,681
			Womens Clubs	2,608
				144,372
	—2—			
324	3/31/20	Dyes and Defense	Consumers and Business Men	8,237
			Textile Mfrs.	1,685
				9,922
	—3—			
235	11/—/20	Statements of Henry B. Thompson and Albert M. Patterson	Consumers and Business Men	1,654
				1,654
	—4—			
326	11/—/20	The Statements of Mr. Francis P. Garvan, Alien Property Custodian	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	18,237
			Forward	22,310
			(Brought Forward	22,310
			Doctors	113
			Drug Mfrs.	1,365
			Educators	6,423
			Foreign	154
			Gov't. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Lawyers	153

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Senators	96
			Stock Holders and Licensees	271
			Students	2,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	8,488
			Womens Clubs	2,608
				59,215
	—5—			
96	11/10/20	Creative Chemistry	Agricultural Agents	1,203
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	16,068
			Drug & Chemical Mfrs.	1,365
			Educators	6,448
			Gov't. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Libraries and Librarians	1,452
			Lime Mfrs.	129
			Members of American Legion	329
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,128
			Senators	96
			Stock Holders and Licensees	271

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Students	7,533
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	7,681
			Womens Clubs	2,608
				73,867
	—6—			
100	12/7/20	Reorganization of Science in Secondary Schools	Consumers and Business Men	2,000
				2,000
	—7—			
327	12/9/20	Books I Have Met.	Consumers and Business Men	3,347
			Educators	2,543
			Prominent Women	1,202
			Students	465
			Womens Clubs	2,401
				9,958
	—8—			
328	12/14/20	Molecules and Man.	Consumers and Business Men	1,408
			Educators	2,113
			Students	1,304
				4,825
	—9—			
111	12/23/20	Census of Dyes and Coal-Tar Chemicals, 1919	Chambers of Commerce	937
			Consumers and Business Men	19,595
			Newspaper Editors	2,275
				22,807
	—10—			
329	12/31/20	The Chemical Industries of German Rhineland	Consumers and Business Men	343
				343
	—11—			
330	1/19/21	The Truth About American Dyes	Consumers and Business Men	1,948
				1,948
	—12—			
331	2/3/21	Has America No Answer For This German Threat?	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	8,237
			Doctors	113
			Drug Mfrs.	1,365
			Educators	4,423
			Foreign	154
			Gov't. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Forward	23,763
			(Brought Forward)	23,763
			Paper Mills	804
			Prominent Men	2,942
			Prominent Women	2,475
			Rotary Clubs	769
			Stock Holders and Licensees	271
			Students	2,643
			Tanners	196
			Textile Mfrs.	8,488
			Womens Clubs	2,608
				44,959
	—13—			
332	2/31/21	Says Longworth Dye Bill Offers Best Solution.	Consumers and Business men	4,893
				4,893
	—14—			
333	3/4/21	Shall America Remain The Only Important Country At The Mercy Of The German Chemists?	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	17,267
			Doctors	113

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Drug Mfrs.	1,365
			Educators	16,423
			Foreign	154
			Gov't. Employees	113
			Ink Mfrs	43
			Kiwanis Clubs	318
			Lawyers	153
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,279
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,848
			Senators	96
			Stock Holders and Licensees	271
			Students	10,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	17,488
			Womens Clubs	2,608
				100,093
	—15—			
334	3/11/21	Chemical Disarmament	Consumers and Business Men	5,879
				5,879
	—16—			
335	3/19/21	Hearings before the Committee on Finance	Consumers, Lawyers, Educators and Business Men	252
				252
	—17—			
336	3/19/21	Hearings Before The Committee on Ways and Means	Consumers, Lawyers, Educators and Business Men	346
				346

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—18—			
337	3/31/21	German Dyestuffs This Year Will Top Big Pre-War Output	Consumers and Business Men	468
				468
	—19—			
338	3/31/21	Will The Chemist Compete With Farmers?	Agricultural Agents	1,216
			Consumers	3,973
			Editors	2,275
			Educators	1,662
			Libraries and Librarians	847
				9,973
	—20—			
339	3/31/21	Dye Makers Must Be Given Chance	Consumers and Business Men	367
				367
	—21—			
340	3/31/21	Treasure Hunting of Today and Chemistry In Our Schools.	Authors	1,433
			Chambers of Commerce	937
			Consumers and Business Men	8,237
			Drug & Chemical Mfrs.	1,365
			Educators	39,421
			Foreign	154
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Libraries and Librarians	847
			Lime Mfrs.	129
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,848
			Stock Holders and Licensees	271
			Students	2,943
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	8,489
			Womens Clubs	2,608
				94,756

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—22—			
49	4/15/21	Germany's Commercial Grip on the World.	Educators, Editors and Business Men	175
				175
	—23—			
341	4/30/21	Future of United States In Hands of Chemists, Slosson Warning.	Prominent Men	4,731
			Prominent Women	1,004
			Scout Masters	14,848
			Students	1,894
				22,477
	—24—			
342	5/18/21	British Dye Licensing Bill.	Consumers and Business Men	3,997
				3,997
	—25—			
343	5/27/21.	Hoover Considers Dye Industry Aid	Chambers of Commerce	937
			Consumers and Business Men	8,237
			Drug Mfrs.	1,365
			Ink Mfrs.	43
			Lime Mfrs.	129
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Tanners	196
			Textile Mfrs.	8,488
				28,451
	—26—			
344	5/31/21	World Mastery Lies In "Dew of Death."	Boston Textile Exposition	5,000
			Newspaper Editors	2,117
			Prominent Men	4,731
				11,848
	—27—			
345	5/31/21	Embargo Is Urged On German Dyes.	Chambers of Commerce	868
			Consumers and Business Men	862
			Newspaper Editors	2,275
				4,005

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—28—			
346	5/31/21	The Next War.	Colleges and Educators	253
			Consumers and Business Men	167
			Prominent Women	340
				760
	—29—			
347	6/1/21	Those Unreliable American Dyes	Consumers and Business Men	487
				487
	—30—			
348	6/20/21	An Appeal	Agricultural Agents	1,216
			Authors	1,433
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	3,153
			Educators	6,423
			Newspaper Editors	2,275
			Senators	96
				15,964
	—31—			
349	6/22/21	What About Chemical Warfare?	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	18,237
			Doctors	113
			Drug Mfrs.	1,365
			Educators	20,846
			Foreign	154
			Govt. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Lawyers	153
			Libraries and Librarians	2,046
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	2,073
			Scout Masters	14,848
			Senators	96
			Stock Holders and Licensees	271
			Students	3,548
			Tanners	196
			Teachers Assn.	1,923
			Textile Mfrs.	11,634
			Womens Clubs	2,608
				96,747
	—32—			
350	7/7/21	Reprint and Circular Series of The National Research Council.	Deans of Colleges	23
				23
	—33—			
109	7/9/21	Census of Dyes and Coal-Tar Chemicals, 1920	Consumers and Business Men	1,973
				1,973
	—34—			
351	7/11/21	Why Tariff Duties Alone Will Not Now Protect The American Dye Industry	Consumers and Business Men	5,063
				5,063
	—35—			
352	7/14/21	Speech of Hon. Caleb R. Layton	Consumers and Business Men	423
				423
	—36—			
353	8/5/21.	The Yale Alumni Weekly;	Deans of Colleges	102
				102
	—37—			
354	8/8/21.	Dye Tariff and License Control	Consumers and Business Men	4,982
				4,982

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—38—			
99	8/15/21	An Exhibit	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Colleges, Educators, and Clergymen	126,423
			Congressmen	431
			Consumers and Business Men	7,237
			Dentists & Doctors	164,419
			Druggists	39,371
			Engineers	32,346
			Foreign	154
			Govt. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Lawyers	122,158
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mfrs.	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,848
			Senators	96
			Students	5,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	6,815
			Utah Citizens	39,458
			Womens Clubs	2,608
				580,240
	—39—			
355	8/17/21.	Testimony of The Army and Navy.	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Congressmen	431
			Consumers and Business Men	18,829

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Doctors	113
			Drug Mfrs.	1,365
			Educators	6,423
			Foreign	154
			Govt. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Lawyers	153
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Senators	96
			Stock Holders and Licensees	271
			Students	2,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	8,488
			Womens Clubs	2,608
				59,807
	—40—			
356	9/6/21	Hearings on the Tariff Bill.	Lawyers	96,561
				96,561
	—41—			
357	9/14/21.	Mr. Francis P. Garvan's Speech of Sept. 7, '21. Delivered before the Joint Session of the Society of Chemical Industry and the American Chemical Society at Columbia University.	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Clergymen and Educators	146,423
			Congressmen	431
			Consumers and Business Men	8,237
			Doctors & Dentists	172,113
			Druggists	41,583
			Engineers	37,346
			Foreign	154

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Govt. Employees	113
			Ink Mfrs.	43
			Forward	410,085
			(Brought Forward)	410,085
			Kiwanis Clubs	318
			Lawyers	127,153
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mfrs.	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,848
			Senators	96
			Students	8,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	8,488
			Utah Citizens	62,073
			Womens Clubs	2,608
				648,429
	—42—			
358	9/23/21.	Coals to Newcastle.	Agricultural Agents	1,216
			Authors	433
			Chambers of Commerce	937
			Consumers and Business Men	8,237
			Educators	6,423
				17,246
	—43—			
359	9/26/21.	The Relation of Our Chemical Industry To Our National Defense	Authors	690
			Congressmen	431
			Newspaper Editors	2,275
			Senators	96
				3,492

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—44—			
360	9/26/21	Why Dyestuff Imports Should be Licensed.	Colleges & Educators	150
			Consumers and Business Men	450
				600
	—45—			
361	10/7/21.	Why the Coal Tar Chemical Industry Must Be Preserved and How To Accomplish It.	Textile Mfrs.	4,984
				4,984
	—46—			
98	11/23/21.	The Riddle of The Rhine.	Agricultural Agents	35
			Authors	19
			Commercial Clubs	68
			Congressmen	403
			Consumers and Business Men	231
			Forward	756
			(Brought Forward)	756
			Editors	396
			Educators	118
			Ex-Service Men	15
			Libraries	2
			Prominent Men	31
			Prominent Women	82
			Scout Masters	39
			Senators	95
				1,534
	—47—			
300	12/21/21.	The Future Independence and Progress of American Medicine In The Age of Chemistry	Agricultural Agents	1,216
			Authors	1,433
			Bankers	56
			Chambers of Commerce	937
			Colleges, Educators and Clergymen	146,423
			Congressmen	431
			Consumers and Business Men	14,620
			Doctors and Dentists	168,669
			Druggists	41,583
			Engineers	37,346

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
			Foreign	154
			Govt. Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Lawyers	123,430
			Libraries and Librarians	847
			Lime Mfrs.	129
			Members of American Legion	427
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Prominent Men	4,731
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	14,848
			Senators	96
			Students	8,643
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	8,488
			Utah Citizens	34,609
			Womens Clubs	2,608
				620,181
	—48—			
362	12/29/21.	Daily News Record.	Consumers and Business Men	8,237
			Drug Mfrs.	1,365
			Ink Mfrs.	43
			Lime Mfrs.	129
			Paint & Oil Mfrs.	1,246
			Paper Mills	804
			Tanners	196
			Textile Mfrs.	3,642
				15,662
	—49—			
363	3/4/22	Allied Booklets	Senators	500
			Miscellaneous	150
				650
	—50—			
364	6/19/22	Atlantic Monthly, June, 1922	Senators	96
			Congressmen	431
				527

Deft's Ex. No.	Date Sent	Name of Article	To Whom Sent	Amount
	—51—			
101	7/7/22.	The Dye Question.	Newspapers & Editors	2,275
				2,275
	—52—			
365	7/17/22	Chemical Number of Yale Alumni, May 12, 1922	Doctors	15,000
				15,000
	—53—			
367	7/29/22	Testimony of Francis P. Garvan	Miscellaneous	2,000
				2,000
	—54—			
366	7/31/22	Francis P. Garvan's Letter to President Harding.	Agricultural Agents	1,959
			Chambers of Commerce	937
			City Engineers	3,750
			City Mayors	2,750
			Congressmen	431
			Consumers and Business Men	56,068
			Drug and Chemical Mfrs.	6,365
			Doctors	102,878
			Educators	9,453
			Government Employees	113
			Ink Mfrs.	43
			Kiwanis Clubs	318
			Libraries and Librarians	1,452
			Lime Mfrs.	129
			Members of American Legion	329
			Newspaper Editors	2,275
			Paint & Oil Mfrs.	1,609
			Paper Mills,	1,051
			Prominent Men	4,831
			Prominent Women	2,475
			Rotary Clubs	769
			Scout Masters	15,065
			Senators	96
			Stockholders and Licensees	271
			Students	10,130
			Tanners	196
			Teachers Assn.	218
			Textile Mfrs.	17,681
			Womens Clubs	2,608
			John Benkart, Hollywood, Cal.	2,500
				249,750

DEFENDANT'S EXHIBIT No. 319.

MEMORANDUM FROM MR. CATON TO COL. THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN, RE, SEIZURE OF BLASS PATENT.

Note: Same as Plaintiff's Exhibit No. 481, and not reprinted here. (*See Record, Exhibits, Vol. II, page 893.*)

DEFENDANT'S EXHIBIT No. 320.

SECOND PROSPECTUS OF THE CHEMICAL FOUNDATION, INC.

Note: Same as Exhibit 8 to defendant's answer and not reprinted here. (*See Record, Vol. I, page 583.*)

DEFENDANT'S EXHIBIT No. 321.

REPORT OF THE BRITISH MISSION APPOINTED TO VISIT ENEMY CHEMICAL FACTORIES IN THE OCCUPIED ZONE ENGAGED IN THE PRODUCTION OF MUNITIONS OF WAR.

Members of the British Mission:

Brig. Gen. H. Hartley, C. O. W. D.
Mr. F. H. Carr.
Capt. A. C. G. Egerton.
Lieut. H. G. Greenwood.
Dr. H. Levenstein.
Mr. W. Macnab.
Mr. A. W. Tangye.
Mr. S. I. Levy, secretary.

Delegates of allied Governments who accompanied the mission in the British zone:

American—

Lieut. Col. C. W. Steese, O. D., U. S. Army.
Lieut. Col. J. P. Norris, C. W. S., U. S. Army.
Maj. T. W. Sill, C. W. S., U. S. Army.
Capt. R. D. McGrath, C. W. S., U. S. Army.
Capt. J. W. Martin, Ord., U. S. Army.
Lieut. H. J. Himmelein, R. D., U. S. Army.

French—

Col. M. Marqueyrol (direction des Poudres).
Comm. M. Chaud.
Mons. T. Sordes.
Mons. N. Simon.

Italian—

Capt. C. Mazetti.
Lieut. I. Cardoso.
Lieut. M. Malvano.
Sig. M. Bonelli.
Sig. M. Piersel.

Belgian—

Capt. M. Janlet.

The usual procedure was first to have a general view of a factory in order to get an idea of its lay-out and prewar capacity, and of the way in which this had been utilized and extended for war purposes. Afterwards the mission divided into three sections in order to get details of the war productions, as follows:

Initial products (e. g., sulphuric acid, nitric acid, ammonia, chlorine, caustic soda): Mr. Tange, Lieut. Greenwood, Capt. Egerton.

Explosives: Mr. Macnab, Mr. Levy.

Poison gas: Mr. Levinstein, Mr. Carr.

The information obtained by each section has been embodied in the present report.

In some cases considerable difficulty was experienced in obtaining accurate details of manufacture, especially as regards substances which have a peace value, and the information must be accepted with some reserve on this account, although it was checked by cross-examination of the officials concerned and by a careful examination of the plant admittedly employed for war purposes.

As a result of its visit, the mission had obtained valuable information as to the methods of manufacture of explosives and poison gases employed by the enemy, and of the initial products necessary for their production. It was also able to form a clear impression of the military value of the German chemical industry.

Some years before the war a combination was formed by the Bayer, Badische, and A. G. P. A. companies and somewhat later a second group was formed which included Meister, Lucius & Bruning, Casella & Kalle. During the war, these two groups amalgamated, and the Griesheim Elektren, Weiler ter Meer, Leonhardt, and other smaller companies entered the combination, which is known as the I. G. It was largely owing to the efforts of this combination that Germany was enabled to continue the war in spite of the blockade. The I. G. works produced the bulk of the synthetic ammonia and nitric acid needed for the production of fertilizers and explosives, all the poison gas (with the exception of some chlorine and phosgene), and a large proportion of the high explosives.

The following are the more important works of the I. G. which were not visited, as they are outside the occupied zone:

Factories of the Aktien Gesellschaft fur Anilinfabrikation.

Factories of the Griesheim Elektron Gesellschaft.

Factory of the Bayer Co. at Elberfeld.

Factory of the Badische Co. at Merseburg.

Factory of Casella & Co. Mainkur, near Frankfurt.

Factory of Leonhardt & Co. Mulheim, near Frankfurt.

A summary of the information obtained as to the war production of the factories visited is given under the headings of "Initial products," "Explosives and poison gases."

INITIAL PRODUCTS FOR MANUFACTURE OF EXPLOSIVES AND POISON GAS.

The principal materials concerned are ammonia, nitric acid, sulphuric acid, and chlorine, and it was on the output of these that the war production of chemical munitions depended. The expansion of output by the factories of the I. G. combination during the war is shown by the following tables:

Ammonia (metric tons NH_3 per day).

	1914	1918
Oppau	25	250
Merseburg	(1)	400
Total	25	650

[1] Nil.

Nitric acid (metric tons 100 per cent acid per day).

	1914	1918
Leverkusen	56	180
Hoechst	150	375
Oppau	?	100
Ludwigshafen	(?) 40	40
Weiler ter Meor	12	24
Total	258	719

Oppau has the power to produce now 500 tons HNO_3 daily, still retaining sufficient ammonia to supply the output at Hochst.

Sulphuric acid (metric tons 100 per cent. acid per day.)

	1914	1918
Leverkuson	340	470
Hochst	224	280
Ludwigshafen	275	410
Weiler ter Meer	48	60
Total	887	1,220

Meister Lucius & Bruning have also erected a large new plant at Hochst which has not yet started and was not examined.

The Bayer Co. has erected at Dormagen a large vitriol plant equal to 250 tons per day.

Chlorine (metric tons per day).

	1914	1918
Leverkuson	7	20
Hochst	4	8
Ludwigshafen	13	35
Total	37	63

Explosives.—No arrangements appear to have been made prior to the outbreak of war to utilize the resources of any of the dye factories for war purposes, and on mobilization their chemists were called up for military service. After the battle of the Marne the Government realized the need for expanding the output of explosives and most of the chemical works were producing small quantities by the end of 1914. The demands made on them increased during 1915, but it was not until 1916 that plant was laid down to assist in the enormous production of explosives required by

the Hindenburg program. Most of the big extensions of the synthetic ammonia and of the nitric and sulphuric acid plants date from this time, many chemists being released from the army and the scientific staff of some of the works being augmented. Standarized plant used for the manufacture of dyes was converted for the production of explosives with remarkable speed; for instance, at Leverkusen a T. N. T. plant producing 250 tons per month was put into operation in six weeks.

The following table shows the amounts produced in the factories visited:

High explosives and intermediates.

Quantities of intermediates are shown only where these were not converted to finished explosives in the producing works.

[Metric tons per week.]

Factory	Ammonium nitrate.	Dinitrobenzene.	Dinitrotoluene.	Trinitrotoluene.	Mononitronaphthalene.	Dinitronaphthalene.	Dinitrochlorbenzene.	Dinitrophenol.	Picric acid.	Trinitroanisole.	Dinitrodiphenylamine.	Hexanitrodiphenamine.
Leverkusen	...	250	...	250	...	150	40	...	...	[1]3	...	...
Domagen	...	...	...	...	...	...	...	...	600	...	...	...
Urdingen	...	60	...	75	(?)	...	...	...	...	...	...	...
Hochst	500	140	...	200	...	...	...	...	...	30	...	[1]1½
Ludwigshafen ..	...	25	50	...	...	15	300	35	...	...	[2]25	...
Oppau	200	...	...	...	...	...	...	...	...	...	...	...
Merseburg	(?)	...	...	...	...	...	...	...	...	...	...	...
Wiesdorf	...	...	120	...	...	...	...	...	...	...	...	...
Schlebusch	100	...	...	150	...	...	...	...	...	...	...	...

[1] For 3 months only. [2] Small. [3] For 1 year.

Other intermediates—Ludwigshafen, sodium benzene sulphonate, 100 tons per week.
Other explosives—Schlebusch, hexanitrodiphenylsulphide, 15 tons per week.

Poison gas.—At first chlorine and phosgene were the main requirements, but afterwards a variety of organic substances were employed, all of which were made by the factories of the I. G. combination. Many of these substances were new and difficult to prepare, and rapid production was only possible owing to the speed with which the peace organization of the dye factories could be utilized for this purpose. When the Government wished to introduce a new gas, a conference of the various firms was held at Berlin to determine how the manufacture should be subdivided in order to use existing plants to the best advantage. For instance, the initial stages of the manufacture of mustard gas were carried out at Ludwigshafen and the final stage at Leverkusen.

The following table shows the production of gas and intermediate products in the various factories visited:

Propellant explosives, detonating substances, etc.

[Metric tons per week.]

Factory.	Nitro-cellulose powder.	Diethyl diphenyl-urea.	Diphen-ylamine.	Nitro-glycer-ine.	Cordite paste.	Dyna-mite.	Tetryl.	Fulmi-nate.	Lead azide.
Urdingen	...	35	7	...	...	...	...	...	...
Kuppersteg	...	...	...	...	...	...	...	...	0.7
Troisdorf	250	...	...	21	40	...	6	7	.7
Schlebusch	...	...	...	...	...	...	...	...	...
Opladen	...	...	...	35	75	...	...	...	...
Wiesdorf	...	...	...	(?) 50	40	...	...	...	...

Output of finished poison gases from various works.

		Factory.	Monthly output (metric tons). Average.	Monthly output (metric tons). Maximum.	Total production (if known). Tons.	Date of commencement.
1.	Chlorine	Leverkusen	600	...	...	Prior to war.
		Hochst	240	...	...	Do.
		Ludwigshaften.	860	1,261	38,600	Do.
2.	Phosgene	Leverkusen	...	30	...	Do.
		Ludwigshaften.	288	621	10,682	Do.
3.	Diphosgene	Leverkusen	...	300	...	June, 1915.
		Hochst	139	266	3,616	September, 1916.
4.	Chlorpicrin	Leverkusen	...	200	...	July, 1916.
		Hochst	45	101	1,127	August, 1916.
5.	Eylyl bromide	Leverkusen	...	60	...	March, 1915.
6.	Bromacetone	do	...	20	...	July, 1916.
7.	Brom acetone, bromethyl, methylketone	Hochst	19	45	685	April, 1915.
8.	Phenyl carbylamine chloride	do	65	124	721	March, 1917.
9.	Mustard gas	Leverkusen	...	300	[1] 4,500	Before July, 1917.
10.	Diphenylchlor arsine	Hochst	150	300	3,000	May, 1917.
	Diphenylcyano arsine	do	...	...	...	February, 1918.
11.	Ethyldichlor arsine	do	78	150	1,092	August, 1917.
12.	Dichlormethyl	do	26	51	233	September, 1917.
13.	Dibrom methyl ether	do	7	29	69	April, 1917.

[1] Estimated from capacity of plant. Probably the same quantity was produced at some other factory as the output of thiodiglycol from Ludwigshafen would suffice for this.

Output of Intermediate Products for Poison Gas Manufacture.

Finished gas.	Intermediate Products.	Total output (metric tons).	Place of production.	Destination of intermediate products.
Phenyl carbylamine	Phenyl mustard oil	(1)	Kalle	Hochst.
Mustard gas	Thiodiglycol	7,026	Ludwigshafen	Leverkusen and 1 other factory.
Diphenylchlorarsine	Phenyl oarsinic acid	1,600	do	Unknown.
		1,200	Kalle	Do.
	Diphenylarsenic acid	4,800	Leverkusen	Probably A. G. F. A., Berlin.
Ethyldichlorarsine	Ethyl arsenious oxide	840	Ludwigshafen	Hochst.

[1] Not obtained.

Note.—In addition Hochst produced 3,000 tons of diphenyl chlor- and cyanarsines from own intermediates.

MILITARY IMPORTANCE OF THE GERMAN CHEMICAL INDUSTRY.

The above figures for the output of explosives and gas show the great military value of the factories of the I. G. combination. Although no arrangements had been made to mobilize them at the outbreak of hostilities, they were rapidly converted to war purposes, thanks to their highly trained personnel and the great technical resources of their peace organization. In the future it is clear that every chemical factory must be regarded as a potential arsenal, and other nations can not therefore submit to the domination of certain sections of chemical industry which Germany exercised before the war. For military security it is essential that each country should have its chemical industry firmly established, and this must be secured as one of the conditions of peace, as otherwise we are leaving Germany in possession of a weapon which will be a permanent menace to the peace of the world.

The key to Germany's war production of explosives was the Haber process for the production of ammonia from atmospheric nitrogen. It is significant that large scale production by this process only began at the end of 1912, and that in the early part of 1914 great pressure was put on the Badische Co. to increase its output. During the war, owing to the extension of the Haber plants at Oppau and Merseburg, Germany has become independent of foreign countries for her supplies of ammonia and nitric acid, substances indispensable for the manufacture not only of high explosives but also of fertilizers for food production. Without such a process Germany could not have made the nitric acid required for her explosives programme, nor obtained fertilizers for food production after the supply of Chile saltpeter had been stopped by our blockade, and it is probable that she could not have

continued the war after 1916. In the event of another war we might be cut off from supplies of saltpeter.

The resources of the German dye industry are of no less military importance. Most of the gases employed toward the end of the war were complex organic substances, none of which had been made previously except in small quantities, and some of which were prepared for the first time during the war. Gas warfare will undoubtedly continue to develop in this direction, and in the future organic substances will be employed which we do not know today. The use of gas will always offer great opportunities for suprise in military operations, and the experiences of the present war has shown that rapid production of a new gas is essential if the surprise is to be effective. Any country without a well-developed organic chemical industry will be severely handicapped in this respect.

H. HARTLEY,
Brigadier General,
On Behalf of the Members of the Mission.

London, February 26, 1919.

DEFENDANT'S EXHIBIT No. 322.

[Journal of Industrial and Engineering Chemistry, June, 1919.]

American Officers in German Chemical Plants.

THE DYESTUFF PLANTS AND THEIR WAR ACTIVITIES.

[By Theodore W. Sill, major, C. W. S., U. S. A.]

During the month of February, 1919, I had the opportunity, as a member of the interallied commission, of visiting most of the principal plants in the various occupied areas of Germany which were de-

voted to the manufacture of dyestuffs, medicinal products, and standard chemicals.

Before going through these various plants one has many ideas, developed from newspaper reports and other sources of information, concerning Germany's war-time conditions, which are considerably changed after observing actual conditions. We had often heard of the great destruction resulting from air raids, of the lack of workers and great labor unrest, of the run-down conditions of the plants, and, in short, one was quite prepared to find them in a disordered state through the lack of operating personnel. However, one discovers very soon that the contrary is quite true. To-day finds these great German plants, probably the greatest of the potential possibilities for war material production, in splendid condition, with a large, highly trained force of employees, and, moreover, with additional opportunities for increasing their production by utilizing the extra equipment added for war materials production.

Owing to the great foresight and efficiency of the German prewar system, that, is efficiency from a military standpoint in particular, all of their man power was registered and so classified that when the call to battle came they kept a large proportion of their trained workmen within these plants. Consequently, they still have the majority of them ready to take part in a new battle for commercial supremacy.

At the present time the plants are operating at about 10 per cent of their productive capacity for peace-time products, but nevertheless they are keeping most of their labor to avoid their becoming mixed up in agitation or possible Bolshevism which may be nourished by lack of employment. Most of these men are utilized in cleaning up the plants every day. Consequently, one finds the plants in quite perfect con-

dition. The only apparent handicap they have at present is the lack of oil and greases for lubrication of machinery, which, however, they have partially overcome by using artificial substitutes.

The important point is that the American people, in particular, should realize that this important portion of Germany's industries is not crippled but intact and ready to operate, and is consequently a dangerous factor in the struggle for commercial supremacy, and also as a potential source of war material production unless properly controlled. Moreover, I do not think the German people as a whole realize completely the magnitude of their defeat: they count upon the Americans in particular very soon forgetting the horrors of the war, resuming their trade with them, utilizing their products, and allowing their industry to thrive once more. At present the only things they lack are raw materials and coal for the operation of the plants, which fortunately the Allies can control, unless the peace terms are lenient enough to allow them to operate on full scale as before. Let us hope that the American people and consumers of chemicals and dyestuffs will back up the American manufacturer so that this previous condition can not be restored.

It was our good fortune to pass through the devastated sections of France and some in Belgium on our way to Germany. One can not see this terrible destruction of land, factories, and cities, so complete and terrible that neither word nor picture can describe adequately without being impressed by the contrast you see upon entering Germany, where all is serene, quiet, clean, and orderly, and scarcely any sign of destruction such as has been visited on the French.

Arriving in Cologne, we made our headquarters there while making a tour of investigation through the plant of the Farbenfabriken vorm. Friedrich Bayer

& Co., at Leverkusen, and also the plant of Weiler-ter Meer, at Uerdingen on the Rhine.

The plant of the Bayer Co. stands out pre-eminently as the best and most modern of German chemical plants. It is a veritable city in itself, well laid out with excellently constructed streets and brick buildings. Their office building and recreation buildings for the employees are luxurious palaces. This plant has expanded considerably during the war, and, despite the contrary assertions of its directors, was widely engaged in the manufacture of war products, particularly poison gases. We had the opportunity of meeting Dr. Duisberg, the chief director, and, incidentally, one of the ex-Kaiser's right-hand men in the development of the war. Many will remember him from his visit to this country at the time of the chemical Congress in 1912. Incidentally, he hopes to be over here again very soon to see his "old-time friends."

The plant of Weiler-ter-Meer at Uerdingen is also an excellent development, kept up in very good condition. Despite the high cost of living in war times, this concern was able to erect within the last year a large, expensively equipped recreation building for their men, and is apparently in good condition, just marking time while awaiting resumption of activities and thankful that the Belgians are there to protect them from the Bolsheviki across the river.

Of all the men whom we met in the various plants in Germany the head of this plant was the most cordial and open in all his dealings with us. It was, of course, a difficult and humiliating position for men to be in, and in many cases we encountered sullen indifference, particularly among the plant directors, but among the lower classes of foremen and workmen there does seem to be a general recognition of the fact that the war has been lost and also that the cause was

wrong to start with. Of course, a good deal of this is propaganda and an effort to pass responsibility on to a government which has been discredited and broken up, but I believe that there is really a large number of the poorer class of Germans who have now come to realize the wrong done by Germany in this war.

After spending a few days in Coblenz, the American headquarters, where we had the opportunity of seeing the American flag proudly waving over the great German fortress of Ehrenbreitstein, we journeyed up the Rhine to Mayence, the headquarters of the French area. Within this area we were privileged to visit the Kalle plant at Biebrich. Very little war work had been done at this place, and the plant was probably the poorest of all we saw, being old, dirty, and in a run-down condition.

At Hoechst-on-the-Main we went through the great plant of Meister, Lucius und Brüning, who were pioneers in the development of German poison gases, and had done considerable work in all kinds of war materials. They, too, had a large, very fine plant, well laid out, and in good operating condition, extending for many acres along the river. They are quite progresive and have developed on a large scale.

A little later we went up to the greatest of all plants, the Badische Anilin und Soda Fabrik, at Ludwigshafen. This plant employs about 16,000 men and covers many acres of ground. They have the plant for dyestuffs, intermediates, etc., at Ludwigshafen, and a little farther up the river, at Oppau, is located the plant for the Haber process. Considerable work on war products was done at Ludwigshafen, but they also were able to make dyestuffs on an appreciable scale during the war. At the present time they have a large stock on hand ready to turn loose on the markets when permission is granted. They, too, had done considerable

work on poison gases and explosive intermediates, but not to an extent which would at all interfere with their resumption of dyestuff manufacture on a large scale.

At Oppau we saw what is probably the most phenomenal scientific development up to date, namely, the practical realization on an operating basis of the Haber process for ammonia production. The buildings are all quite new and well constructed, and the vast amount of detail has been studiously and carefully worked out on a practical operating basis, producing upward of 100,000 tons of ammonia per year. This plant was a large factor in enabling Germany to stay in the war as long as she did, by means of producing large quantities of nitrates. The Germans have also another plant, a duplicate of this, which they are operating in the unoccupied area of Germany, so that it is really a great practical possibility at the present time.

Incidentally, it came to our attention that Haber, to whom Germany owes so much of her development in chemical products in warfare, had never attained a higher rank than captain in the German chemical warfare service, despite the responsibility and immensity of his job.

Looking at our inspection of the German plants from a general viewpoint, it is my opinion that, considering the advantage gained in America by the last four years of experience in chemical manufacturing and the lessons learned by our equipment manufacturers, the German plants at the present time from an equipment standpoint and general layout are not superior to the existing American development, their advantage being that they have had experienced and long-trained personnel schooled and willing to carry on the laborious details; but if our people here at home will encourage our new, rapidly growing indus-

tries, there is no reason why our own personnel can not equal or, in fact, surpass that of the Germans.

There are but few distinctive features to be observed which might advantageously be adopted in some American plants. For instance, (1) the Germans have a very clever method of building their water towers around the power-house chimneys or stacks, thus utilizing the waste heat and keeping their water from freezing; (2) they have a method of distributing the pressure in the filter presses so that it is not only applied at the center by a large screw, as in most of our presses, but also horizontally along the sides of the press; (3) at one place we saw an excellent automatic nitration system based upon the alternate filling and refilling of a small tank with a measured quantity of water, which in turn was connected with valves releasing definite amounts of acid and benzol; (4) the Germans have in practically all their plants a very high grade of lead fittings, in which art they have advanced remarkably well; (5) in many cases it was also noted they used square flanges on the elbows for their high-pressure piping connections.

On the other hand, one notices considerable lack of conveying equipment, such as bucket elevators and belt conveyors through these plants, the probability being that they utilize man power much more than we do, and do not rely upon mechanical equipment so much. Moreover, despite the aggravated condition of transport during war times there were several instances where they made products in these various plants in successive steps, making one part at this plant, conveying it perhaps to a considerable distance up the Rhine to another plant, where it would be converted into an intermediate, and, perhaps bring it back almost to its original starting point to be finished, and then carrying it over as far as Berlin, perhaps, to be put into shells. Despite the much-vaunted effi-

ciency of Geman operations this seemed to be a glaring refutation of their claim, particularly in view of the fact that the type of apparatus was very simple and practically the same for all steps of the operation.

Although in most cases, particularly in connection with war problems the Germans were quite liberal with information in anwer to our questions, they did on many occasions fall back on Berlin as an alibi, emphasizing the fact that all plants were controlled by the war minister in Berlin, that all papers were there, and that they were but pawns to do as he directed—the old government, now discredited, being to blame for all their war production.

Among the developments to be noted during the war in Germany, which are of special interest, was the production of synthetic rubber on a large scale and a practical basis. This was done at the Bayer plant in Leverkusen, and the production, though very expensive, was of material assistance in meeting their great shortage of rubber.

[MAP]

Another interesting phenomenon was their practical manufacture of washable paper cloth. This was utilized in the manufacture of shirts and of various articles of clothing, as well as towels, tablecloths, etc. It was very successful, and was a considerable factor in meeting their shortage of linen, cotton, and such materials, aside from being exceptionally cheap.

At the present time in the occupied areas of Germany conditions are quiet and orderly, and the people are really thankful to have the allied armies there to occupy those areas of Germany, as it means order and quiet in considerable contrast with what transpires in other portions of Germany. The inhabitants have a fear that the allies, particularly the French, are going

to occupy the land permanently, but otherwise are quite satisfied. One sees store windows well filled with luxuries—optical goods, cameras, etc.—but the grocery stores are practically empty, and the quality of food is quite inferior. However, there are very few signs of any suffering, which has been so widely exaggerated in the press reports, but there is, of course, much inconvenience.

At the present time it is my understanding that the allies occupying the various areas plan to keep a qualified corps of representatives to participate in the control of operations of the factories in their area. They will thus have command over the raw materials utilized and required, the methods of operation, and the export of the materials produced. It is my strong conviction that America, too, despite the fact that there are no particularly large chemical plants in the area which the American army occupies, should, in consideration of being an ally and a much needed and valuable participant in the victory gained, also have representatives in each of these factories for a long period of time, to gain the valuable information which our allies are obtaining. This information should be utilized by our Government for the disposal of the requirements of American manufacturers, so that our industries now just getting on their feet may have equal chance in competing in the world market.

DEFENDANT'S EXHIBIT No. 323.

EXTRACT FROM ANNUAL REPORT OF FEDERAL TRADE FISCAL YEAR ENDED JUNE 30, 1918.

Licenses under enemy patents, trade-marks, and copyrights.—When the Commission received its authority to grant licenses under enemy patents in the fall

of 1917, it found an acute condition as to certain synthetic drugs which had formerly been entirely of German manufacture and importation. The drug which presented the gravest and most pressing problem was that introduced as "salvarsan," or "606," for the available supply in this country was almost exhausted, and the demand from the Army, the Navy and the medical profession at large was very extensive, so that in many instances the price demanded for this product rendered its use prohibitive. The situation was carefully studied in conference with the Surgeon Generals of the Army, the Navy and public Health Service and with the representatives of the subcommittee on synthetic drugs of the National Research Council, and of the American Medical Association. As one result of this conference and of further investigation following it, it was determined to prescribe new names in licenses, not only for "salvarsan," but for other synthetic drugs, because the German patent owners or their American agents generally possessed trade-mark rights for the only names by which the drugs had heretofore been known. On November 27, 1917, licenses to manufacture and sell "arsphenamine," which is the new name prescribed by the Commission in its licenses for "salvarsan," were granted to the Dermatological Research Laboratories, the Takamine Laboratory (Inc.), and the Farbwerke-Hoeschst Co.—subsequently canceled and reissued to S. A. Metz Laboratories (Inc.)—and on January 12, 1918, a fourth license was issued to the Diarsenol Co. (Inc.). On March 4, 1918, licenses were issued to each of these concerns to manufacture and sell "neo-arsphenamine," which is a related and substitute drug introduced under the trade name "neosalvarsan." Difficulty was encountered in the determination of the patents under which these licenses should be granted, but they were finally issued under five patents, covering respectively the product "arsphena-

mine," the product "neorsphenamine," the process for making these products, the packaging of the products in glass ampules in an atmosphere of inert gas, and the method of administration by the physician.

Each of the licenses for "arsphenamine" and "neo-arsphenamine" is obliged to submit a specimen from each lot of its product to the Hygienic Laboratory of the United States Public Health Service, by whom it must be approved before the lot is released for sale.

The result of the issuance of these licenses has been a very decided alleviation of the distressing condition which previously existed, and the market now seems to be fairly supplied at a reasonable price.

After the apparent solution of the "salvarsan" problem, the Commission considered the situation involving the drug introduced as "novocain," a local anaesthetic extensively used as a substitute for cocaine, and after investigation and consideration with the subcommittee on synthetic drugs of the National Research Council, licenses were issued on December 17, 1917, to the Farbwerke-Hoechst Co.—subsequently canceled and reissued to H. A. Metz Laboratories (Inc.)—and the Rector Chemical Co. (Inc.), and further licenses were issued to the Abbott Laboratories on January 10, 1918, and to the Calco Chemical Co., on February 18, 1918. These licenses prescribed the name "procaine" for this drug introduced as "novocain."

A third drug in great demand was a widely used hypnotic known under the trade name "veronal" and the manufacture and sale of this drug under the name "barbital" was licensed to the Abbott Laboratories on December 17, 1917, and to Antoine Chiris Co. on March 11, 1918.

The only other drug for the manufacture of which a license has been issued is phenyl cinchoninic acid, formerly sold under the name "atophan." This drug

is valuable in the treatment of rheumatism and gout, but the demand for it is not nearly so pressing as for the other licensed drugs, and a license has been issued only to the Abbott Laboratories, on March 23, 1918.

While each drug licensee must use the new name prescribed by the Commission, it may also use its own trade name under certain restrictions. The Commission retains control over the licensees to the extent necessary to assure the production of drugs in sufficient quantities and of satisfactory quality at reasonable prices.

The licensees for the manufacture of these various drugs were very seriously handicapped by lack of knowledge in the United States of the manufacturing processes and by the difficulty of securing the necessary equipment and materials, but they have attacked these obstacles willingly and successfully. The Army, the Navy, and the Red Cross in addition to the medical profession are calling for vast quantities of these and other drugs and the manufacture of those quantities within the requisite time necessitates the installation of equipment which will be useless after these quantities have been supplied and normal conditions are again approached. It seems to be the fact that where the selling price of these drugs is undesirably high, it is due to enhanced cost of materials and equipment and to difficulties in unfamiliar processes rather than to any undue profit charged by the licensee, but reductions in prices may be expected as manufacturing processes become more nearly standardized. The Commission is inclined to be patient with its licensees, in view of the difficulties which they have encountered, and not only to stimulate production for the fulfillment of current needs, but also be develop a sound and enduring industry.

While the drug licenses have been the most important issued from a humanitarian viewpoint, the

licenses for the production of coal-tar dyes have been the most important from the industrial viewpoint, and vast sums are being invested in the United States for the carrying on of this peculiarly German industry. E. I. du Pont de Nemours & Co. and the National Aniline & Chemical Co. (Inc.), as well as certain other concerns, are developing and carrying on the coal-tar dye industry in the United States on a very large scale, but they have not been free to produce many of the colors covered by unexpired patents owned by German companies. Both the E. I. du Pont de Nemours & Co. and the National Aniline & Chemical Co. have quickly accepted the present opportunity to commence the manufacture of German-controlled colors, and have recognized the expediency of obtaining legal protection for such activity by license from the Commission.

The research work in identifying the processes of manufacturing these various colors, and their production in commercial quantities, was not materially aided by the disclosures of the patents, and it was an especially difficult task both for the applicants and for the Commission to determine under what patents these dye licenses should be granted to protect the licensees in what they desired to do. In many instances it was found that the disclosure in the patent was entirely inadequate. In other instances the disclosure was sufficient for laboratory practice, but entirely impracticable for commercial production. Again, one patent might disclose an incomplete process, while an essential step in the complete process would be covered by another patent, the title to which was in a different owner. Persistent investigation and experimentation by the applicants for license, together with extensive consideration by the Commission, finally resulted in a fairly satisfactory grouping of the necessary patents under which licenses were issued.

Four licenses have been issued to the E. I. du

Pont de Nemours & Co. under 22 patents to manufacture, use, and sell, respectively, anthracene dyes, synthetic indigo, and its derivities, sulphur dyes, and azo dyes. Licenses for the same four groups have been issued to the National Aniline & Chemical Co. under 46 patents. Licenses have also been issued to E. C. Klipstein & Sons Co., Merrimac Chemical Co., and to E. I. du Pont de Nemours & Co. to manufacture and sell solid hydrosulfites, which are necessarily used in the application of certain dyes.

It is an interesting fact that some of these patents cover products which are sold by the dye manufacturer, and that other patented process must be used by the textile manufacturer in applying the product to dye his goods. The Germans used this condition to force the purchase of products, both patented and unpatented, from the owner of the patent covering the process of application, but the Commission's licensees have granted each manufacturer the right to authorize textile workers to employ these application processes.

Applications for further dye licenses will probably be made as the manufacturers determine other patented colors which they wish to produce.

The Pacific Flush Tank Co. was granted a license under which it is authorized to permit the use of the Imhoff process of sewage disposal. Lemboke, von Bernuth Co. (Inc.) has a license authorizing it to permit the use of the Rueping process for treating timber. The Hoevel Manufacturing Co. has a license to manufacture and sell certain sand blast machines. The American Parlograph Corporation is licensed to make and sell a certain diaphragm head for dictating machines.

Each of these four licenses is in terms exclusive, and they were so ordered by the Commission because of conditions continuously existing since long prior to the war, and to have licensed others would have seri-

ously disrupted relations existing between the licensees and many concerns in the United States. Although these licenses are in terms exclusive, the public is entirely protected by the provision that the licenses are terminable in the absolute discretion of the Commission.

Licenses have been issued to Pfanstiehl Co. (Inc.), and to the New Process Metals Co. to manufacture, use, and sell pyrophoric alloy, which is a so-called "sparking metal" especially useful to the armies in star shells, and also extensively used in cigar lighters, miners' lamps, and gas lighters.

Licenses also have been issued to the French Battery & Carbon Co. to manufacture and sell certain flashlight batteries; to Albert B. Moses for the production of artificial milk; to F. L. Smidth & Co. for grinding mills; to Robert Reiner Importing Co. for embroidering machines; to Stearns-Rogers Manufacturing Co. for drying apparatus; and to General Ceramics Co. for acid towers.

Only 10 applications have been filed for licenses under trade-marks, and only three of these have been allowed and licenses issued, while five applications are still pending. One of these licenses was issued to the Abbott Laboratories to use the trade-mark "Veronal" in order to identify the drug named "barbital" made under a patent license. Another was granted to Lehn & Fink to continue to use the trade-mark "Pebeco" on tooth paste made by a secret process known in the United States only to the licensee and formerly imported from Germany under contract with the trade-mark owner. The third was issued to the Anchor Packing Co. to use the trade-mark "Tauril" on packing, also made by a secret process known in this country only to the licensee. Licenses under trade-marks have been denied where it was evident that to grant a license would permit misrepresentation or confusion.

Under copyrights, one license has been issued to Houghton Mifflin Co. to publish a German officer's description of submarine warfare; another to David McKay, of Philadelphia, to publish an English and Greek dictionary; and a third to the John Crearar Library, of Chicago, to reproduce certain pages of a German treatise on dyes. The remaining licenses under copyrights have been for the production of grand operas. The San Carlo Grand Opera Co. is licensed to produce "The Jewels of the Madonna," "The Secret of Suzanne," "Salome," and "Hansel and Gretel." The Philadelphia Operatic Society is licensed to produce "The Secret of Suzanne," and the Ravinia Co., of Chicago, is licensed to perform "The Secret of Suzanne" and the second act of "The Jewels of the Madonna."

In all of the licenses issued by the Commission, a royalty is stipulated which is payable periodically to the Alien Property Custodian and the right is reserved in the Commission to investigate the licensee's business and to cancel a license at any time in its discretion, if in its opinion the licensee has failed to satisfy the reasonable requirements of the public with satisfactory articles at reasonable prices, or under any circumstances which in the opinion of the Commission make it advisable that the license be canceled in whole or in part.

Despite the complete control which the Commission thus retains over the licensee, in order to protect the interests of the public, the licensee is subject under the "trading with the enemy act" to a contingent liability which seems inadvisable and unnecessary. The act provides that the licensee shall be required to deposit with the Alien Property Custodian not to exceed 5 per cent of the gross sums received by the licensee, or not to exceed 5 per cent of the value of the use of the licensee. The act further provides that

within one year after the war the enemy owner may bring suit against the Commission's licensee for recovery for all use and enjoyment of the subject matter and that the court may decree to the owner payment of a reasonable royalty, and may terminate the license and enjoin the licensee from infringement thereafter, or continue the license for such period and upon such terms as it may find to be reasonable.

These provisions as to royalty and termination of the license have caused a decided feeling of uneasiness and uncertainty among the Commission's licensees, and many competent counsel are advising clients not to apply for licenses of such inconclusive character, but to take their chances of being sued for infringement after the war in the ordinary course.

Every license issued by the Commission has been granted, not for the duration of the war, but for the life of the right under which it is granted, and the Commission is firmly of the opinion that equity demands that the royalty prescribed in the license be fixed with more definiteness, and that the power of the courts to terminate the licenses be abrogated. In some instances 5 per cent of the gross sums received by the licensee is not a sufficiently high royalty to be reasonable and in other instances it is entirely too high, and the other provision as to the deposit of 5 per cent of the value of the use of the licensed subject matter apparently has no relation to what may be a reasonable royalty. Futhermore, after the war a court may establish what it considers a reasonable royalty without any relation to the investigation by the Commission or the rate established by it in the license. Finally, in view of the fact that these licenses are designed to protect the United States concerns in establishing and carrying on industries which heretofore have been monopolized unfairly by German and Austrian interests to the very great disadvantage of the

American public, it seems inequitable in high degree to have the Commission's licenses terminable by the courts at the suit of the enemy owners.

It is earnestly urged that these serious defects of the present act should be cured, to the end that the business licensed by the Commission may rest on a firm foundation. Senate Bill No. 3523, which was introduced on January 16, 1918, at the request of the Commission, and another bill which was recently transmitted with a request for its introduction, together will remedy the present uncertainties. In substance they provide that the Commission in its license may prescribe a reasonable royalty and that at the suit of the enemy owner after the war, the court, although it may also establish a reasonable royalty, shall accept that prescribed in the license as prima facie reasonable, while the powers of the courts to terminate the licenses is entirely cut off. The enactment of these bills will certainly enable the Commission to do much more effective work in the establishment of industries which have heretofore been monopolized by our present enemies.

DEFENDANT'S EXHIBITS Nos. 324 to 367, INCLUSIVE.

LITERATURE DISTRIBUTED BY THE CHEMICAL FOUNDATION, INC.

Note: Above Articles of Literature listed on Defendant's Exhibit No. 318. (*See Record, Exhibits, Vol. V, page 3421.*)

DEFENDANT'S EXHIBIT No. 373. **3469**

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 327 (This License dated Sept. 1, 1920 replaced Federal Trade Comm. License #18 cancelled September 1, 1920)									
ANTHRACENE									
J-15-33-3	Anthracene	2 814.57				652.97	1 389.78	347.26	424.56
J-33-	Intermediates—anthracene series	267.30				267.30			
J-33-3	Anthracene	29 617.91				6 622.97	15 617.77	3 775.53	3 601.64
J-33-3-A	Anthracene residues	1 303.29					1 131.51	171.78	
J-33-3-B	Anthracene purification—hydraulic pressing	169.66					169.66		
J-33-3-C	Anthracene—grinding	112.62						58.53	54.09
R-128-G	Derivatives of anthracene—general	1 410.88		1 413.06	31.30	29.12			
		35 696.23		1 413.06	31.30	7 572.36	18 308.72	4 353.10	4 080.29
ANTHRAQUINONE									
J-15-33-4	Anthraquinone	2 847.75				686.74	1 876.08	284.93	
J-25-15	Study of Analytical methods Anthracene & Anthraquinone	2 044.41					1 171.08	873.33	
J-33-4	Anthraquinone	26 713.39				3 820.73	21 661.65	590.85	640.16
J-33-4-A	Anthraquinone—Sublimation	79.49					79.49		
J-33-4-B	" —Sodium Nitrate process	402.74					367.14	35.60	
J-33-8	Anthraquinone—Air Oxidation	8 860.93					7 320.42	1 540.51	
J-33-9	" —Chromium Recovery	9 701.58					8 407.47		1 294.11
J-33-11	" —Liquid Condensation	17 980.60					12 523.75	5 456.85	
R-128-G-1	"	5 614.62				5 614.62			
		74 245.51				10 122.09	53 407.07	8 782.07	1 934.27
ANTHRAQUINONE BETA SULPHONIC ACID									
J-15-33-1	Silver Salt	5 333.06				2 469.58	1 448.35	607.32	807.81
J-33-1	Silver Salt	33 615.33				17 049.32	9 793.29	2 272.62	4 500.10
J-33-7	Anthraquinone Sulphonic Acid—Separation	3 698.00					3 207.28	490.72	
		42 646.39				19 518.90	14 448.92	3 370.66	5 307.91

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DEFENDANT'S EXHIBIT No. 373. 3471

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
	LICENSE NO. 327 (Cont'd.)								
BETA AMINO ANTHRAQUINONE									
J-33-10	Beta Amino	8 814.67					4 429.35	4 385.32	
J-33-10-A	Beta Amino Anthraquinone—New Process	4 249.06					4 244.77	4.29	
J-33-10-B	Betamine	765.74							765.74
J-15-33-10	b-Amino anthraquinone	872.67					872.67		
		14 702.14					9 546.79	4 389.61	765.74
PONSOL BLUE R									
J-15-53-1	Ponsol Blue—R	6 914.46				717.47	1 617.90	530.65	4 048.44
J-53-1	Ponsul Blue—R	16 821.04			6 777.28	5 003.78	2 543.99	—	2 495.99
J-53-1-A	Ponsul Blue—Pressure and Oil Fusions	10 180.37					1 694.10	7 839.01	647.26
J-28-18	Melting Points of Caustic potash-sodium acetate mixtures	405.26							405.26
J-53-1-B	Ponsul Blue—R—New Process	940.87						1 089.29	148.42
J-53-2-A	" " R—Solubility Studies	1 163.47							1 163.47
J-53-34	" " RS	7 810.87						3 917.44	3 893.43
J-53-A	Pasting Ponsul Dyes	1 643.54				1 643.54			
		45 879.88			6 777.28	7 364.79	5 855.99	13 376.39	12 505.43
PONSUL BLUE G									
J-15-53-2	Ponsul Blue G	8 179.07				490.02	1 751.89	3 645.81	2 291.35
J-15-53-3	Ponsul Blue BCS	1 536.14				233.02	237.80		1 065.32
J-53-2	Ponsul Blue G	2 078.16			286.65	1 700.09	91.42		
J-53-2-SW	" " "—Semi Works	5.94					5.94		
J-53-2-P	Pasting Ponsul Blue G	18 726.21					7 694.87	9 993.20	1 038.14
		30 525.52			286.65	2 423.13	9 781.92	13 639.01	4 394.81
PONSUL YELLOW G									
J-15-53-5	Ponsul Yellow G	12 122.51				1 415.57	7 719.22		2 987.72
J-53-5	Ponsul Yellow G	15 789.31			84.24	1 124.24	2 726.15	14 757.23	2 902.55
J-53-5-P	Pasting Ponsul Yellow G	1 429.58					1 529.58		
		29 341.40			84.24	2 539.81	11 874.95	14 757.23	85.17

DEFENDANT'S EXHIBIT No. 373.

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 328									
(This license dated Sept. 1, 1920 replaced Federal Trade Comm. License #18, cancelled Sept. 1, 1920)									
NZANTHRONE									
J-15-33-12	Benzanthrone	1 565.45					1 563.05	2.40	
J-33-12	Benzanthrone	6 377.49					2 013.43	4 362.06	
J-33-12-A	Benzanthrone—Preparation of Anthranol	1 072.03						600.52	471.51
		9 014.97					3 578.48	4 964.98	471.51
NSOL DARK BLUE BR									
J-15-53-4	Ponsol Dark Blue BR	5 771.43				717.68	5 053.75		
J-53-4	Ponsol Dark Blue BR	7 479.13			2 099.34	4 832.65	547.14		
J-53-4-A	Ponsol Dark Blue BR—Pressure and Oil Fusions	10 231.22					3 877.13	6 354.09	
J-28-19	Stability of Benzanthrone colors	469.26							469.26
		23 951.04			2 099.34	5 550.33	9 478.02	6 354.09	469.26
NSOL GREEN B									
J-15-53-10	Ponsol Green B	5 585.44				737.35	4 640.98		207.11
J-53-10	Ponsol Green B	17 627.95			1 855.96	2 628.45	5 750.76	5 547.94	1 844.84
J-53-10-P	Pasting Ponsol Green B	1 041.70					511.33	530.37	
		24 255.09			1 855.96	3 365.80	10 903.07	6 078.31	2 051.95
LICENSE NO. 329									
(This license dated Sept. 1, 1920 replaced Federal Trade Comm. License #18, cancelled Sept. 1, 1920)									
NSOL VIOLET R									
J-15-53-8	Ponsol Violet R Extra	1 968.97				673.89	1 295.08		
J-53-8-A	Ponsol Violet R Caustic Potash Recovery	641.99					294.25	347.74	
J-53-8	Ponsol Violet R	7 905.43			2 551.68	5 295.39	58.36		
J-53-8-B	Ponsol Violet R Oil Fusions	4 935.78					4 935.78		
		15 452.17			2 551.68	5 969.28	6 583.47	347.74	

DEFENDANT'S EXHIBIT No. 373. **3475**

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

	Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 330								
(This license dated Sept. 1, 1920 replaced Federal Trade Comm. License #18, cancelled Sept. 1, 1920)								
PONSOL VIOLET RR								
J-15-53-9 Ponsol Violet RR Extra	5 314.61				380.58	1 810.82	464.28	2 658.93
J-53-9 Ponsol Violet RR	8 219.46			1 123.57	1 984.88	1 597.70	217.37	3 295.94
J-53-9-P Pasting Ponsol Violet RR Extra	1 998.08					1 146.22	851.86	
	15 532.15			1 123.57	2 365.46	4 554.74	1 533.51	5 954.87
LICENSE NO. 333								
(This license dated Sept. 1, 1920 replaced Federal Trade Comm. License #18, cancelled Sept. 1, 1920)								
PONSOL BLUE RP								
J-53-34 Ponsol Blue RP	799.09							799.09
LICENSE NO. 400								
(This license dated May 15, 1923 replaced Federal Trade Comm. License #16, cancelled Sept. 1, 1920)								
PONSOL CLARET B								
J-53-11 Ponsol Bordeaux B	10 779.52			5 878.45	4 900.93	.14		
LICENSE NO. 402								
PONSOL VIOLET RN								
J-53-30 Ponsol Violet RN	1 430.48				1 390.12	40.36		
LICENSE NO. 404								
PONSOL PINK B								
J-53-32 Ponsol Pink B	185.05				185.05			
LICENSE NO. 382								
PONSOL BLUE 3G								
J-53-36 Ponsol Blue 3G	993.80							993.80
LICENSE NO. 383								
PONSOL RED VIOLET 2RN								
J-53-31 Ponsol Red Violet 2 RN	4 125.56				820.29	88.31	3 216.96	

DEFENDANT'S EXHIBIT No. 373. 3477

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

	Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 389								
PONSOL GOLDEN ORANGE G and 2RT								
J-53-6 Ponsol Golden Orange R	4 816.88			2 017.70	2 794.93	4.25		
J-53-7 Ponsol Golden Orange RRT	6 326.04			3 806.37	2 404.28	115.39		
	11 142.92			5 824.07	5 199.21	119.64		
LICENSE NO. 398								
ORTHO CHLOR PARANITRANILINE								
J-31-78 Ortho-chlor-para-nitraniline	1 224.96							1 224.96
LITHOSOL VERMILLION G								
No expenditure prior to Jan. 1, 1923	0 00							
LICENSE NO. 399								
DINITRO STILBENE DISULPHONIC ACID								
J-41-3-A Diamino stilbene—dinitro-stilbene method	9 526.59					5 577.85	2 022.34	1 926.40
ORANGE OR BROWN STILBENE DYE								
No expenditure prior to Jan. 1, 1923	0 00							

DEFENDANT'S EXHIBIT No. 373. **3479**

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 249									
ULPHOGENE YELLOW GG									
J-15-52-13	Sulphogene Yellow GG	8 102.12					6 310.07	330.78	1 461.27
J-52-13	Sulphogene Yellow G	5 849.38			1 331.72	143.24	2 538.63	957.70	878.09
		13 951.50			1,331.72	143.24	8 848.70	1 288.48	2 339.36
LICENSE NO. 365									
ULPHOGENE BROWN R									
J-52-16	Sulphogene Brown RB	21 186 74			2 546.39	11 447.84	7 102.83	89.68	
J-52-47	Sulphogene Brown RBNNX	1 871 23						316.36	1 554.87
		23 057.97			2 546.39	11 447.84	7 102.83	406.04	1 554.87
LICENSE NO. 334									
ULPHOGENE BORDEAUX B									
J-15-52-20	Sulphogene Bordeaux B	4 108 10				1 773.63	1 710.58	488.47	135.42
J-25-26	Study of Analytical Methods—Sulphogene Bordeaux	1 637.73						951.27	686.46
J-52-20	Bordeaux B	9 053.27				4 394.33	4 134.59	524.35	
J-52-20-A	Bordeaux B—Nitrosophenol Process	2 810 45					396.02	2 408.77	5.66
J-52-25	Sulphogene Brilliant Bordeaux RR	641 04					594.72	46.32	
		18 250.59				6 167.96	6 835.91	4 419.18	827.54
LICENSE NO. 366									
ULPHANTHRENE PINK FF									
J-52-53	Sulphogene Hydron Pink	3 221.87							3 221.87
LICENSE NO. 368									
YDRON ORANGE, VIOLET, CRIMSON, BROWN									
J-52-54	Sulphogene Hydron Brown	1 259 95							1 259.95
J-52-55	Hydron Bordeaux	402.92							402.92
		1 662.87							1 662.87
LICENSE NO. 387									
ITHOSOL BORDEAUX B									
J-43-108	Lithosol Bordeaux B	1 215.18						405.17	810.01

DEFENDANT'S EXHIBIT No. 373. **3481**

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 314									
ARABAZOL									
J-25-28	Study of Analytical Methods—Carbazol	1 725.38						1 725.38	
J-33-2	Carbazol	12 192.20				3 671.08	4 777.19	604.83	3 139.10
J-33-2-1	do —Sublimation	720.72					720.72		
J-33-2-2	do —Distillation	636.46						634.94	1.52
		15 274.76				3 671.08	5 497.91	2 965.15	3 140.62
HYDRON BLUE R									
J-52-12-A	Hydron Blue R	47 188.04					29 121.63	17 895.29	171.12
LICENSE NO. 364									
HYDRON BLUE G									
J-52-12-B	Hydron Blue G (New)	25 374.91					3 168.97	13 863.34	8 342.60
LICENSE NO. 332									
(This License dated Dec. 19, 1920 replaced Federal Trade Comm. License #21 cancelled Sept. 1, 1920)									
BETA HYDROXY NAPHTHOIC ACID									
J-15-32-24	Beta Hydroxy Naphthoic Acid	5 874.08					589.96	5 282.29	1.83
J-32-24	do	21 869.12				6 016.33	5 584.56	10 115.70	152.53
		27 743.20				6 016.33	6 174.52	15 397.99	154.36
DUPONT NAPHTHANIL AS AND BS									
J-16-31-A-22	DuPont Naphthanil for Printing	1 085.51							1 085.51
J-32-29	Naphthol AS	6 902.25					4 026.42	1 995.62	219.96
J-32-34	Naphthol AN	740.77				660.25	4 026.42	1 995.62	219.96
		8 728.53				660.25	4 090.84	2 671.97	1 305.47
LICENSE 381									
PONTACYL FAST LIGHT YELLOW 2G AND 3G									
J-31-26	Phenylhydrazine Sulphonic Acid	1 452.21				1 410.33	41.88		
J-34-1	1-Sulpho Phenyl 3-Methyl 5-Pyrazolone	5 943.67					2 324.43	3 619.24	
J-31-76	Phenylhydrazine—B-Chlor-M-Sulphonic Acid	527.67							527.67
J-31-77	1-Ortho-Clor-Meta-Sulpho-Phenyl 3-Methyl 5-Pyrazolone	562.84							562.84
J-31-A-29	1-Meta-Sulpho-Ortho-Toylyl 3-Methyl 5-Pyrazolone	411.65							411.65
J-43-286	Pontacyl Light Yellow 3G	553.16							553.16
		9 451.20				1 410.33	2 366.31	3 619.24	2 055.32

DEFENDANT'S EXHIBIT No. 373. 3483

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE CHEMICAL FOUNDATION.

1916 to JAN. 1, 1923.

	Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 331								
PONTACHROME BLACK 6BX								
J-15-43-103 Pontachrome Black 6BX	1 858.43				396.05	1 075.36	386.12	
J-43-103 Pontachrome Black 6BX	21 744.78				6 010.39	9 513.27	5 538.03	683.09
	23 603.21				6 407.34	10 588.63	5 924.15	683.09
H-AMIDO—2-NAPTHOL 4-SULPHONIC ACID								
J-15-32-19 1-2-4 Acid	5 251.23				916.51	1 509.30	2 825.42	
J-32-19 1-2-4 Acid	14 439.04			1 978.04	6 475.02	1 438.28	1 388.09	3 159.61
R-128-F-22 1-Amino 2-Oxy 4 Sulphonic Acid	792.32			792.32				
	20 482.59			2 770.36	7 391.53	2 947.58	4 213.51	3 159.61
Total Expenditures for Products Licensed from the Chemical Foundation	640 656.88		1 413.06	33 098.41	122 603.45	250 892.28	160 255.51	72 394.17

DEFENDANT'S EXHIBIT No. 373. 3485

EXPENDITURES FOR RESEARCH WORK ON PRODUCTS LICENSED FROM THE FEDERAL TRADE COMMISSION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 19									
PHENYLGLYCINE AND INDIGO INTERMEDIATES									
J-15-31-11	Phenylglycine	10 980.92				2 900.91	4 081.26	1 687.16	2 311.59
J-25-14	Study of Analytical Methods—Formaldehyde	608.05					608.05		
J-26-1	Plant Investigation—Chloracetic and Phenylglycine Plant	1 182.29			1 182.29				
J-30-1	Chloracetic Acid—Partial Chlorination	25 482.32					647 28	3.01	
J-30-9	Chloracetic Acid—Distillation	644.27				9 513.09	6 108.69	9 860.54	
J-31-11	Phenylglycine	44 884.94			5 609.13	24 553.60	4 686.18	6 199.48	3 836.55
J-31-11-A	Phenylglycine—Chloracetic Acid Method	9 784.12					6 332.72	3 478.37	26.97
J-31-11-1	Phenylglycine—Testing Ex'l. Sta. Cyanide	116.85						116.85	
J-31-11-3	Phenylglycine—Recovery of By-Products	123.99						123.99	
J-31-17	Phenylglycine Trichlorethylene—Synthesis	2 225.36			1 348.06	907.30			
J-31-11-B	Phenylglycine—Alcohol Method	1 512.63						1 215.04	297.59
E-391-S	Organic Research—Phenylglycine	10 352.73	566.84	4 733.04	5 071.51	18.66			
R-128-F-7	Phenylglycine—O-Carboxylic Acid	10 583.91		10 145.01	438.90				
		118 512.38	566.84	14 878.05	13 649.89	37 856.24	22 464.18	22 678.42	6 418.76
INDIGO									
J-54	Indigo and Derivatives—Plant Process	67 387.96		85 59	10 480.48	41 874.97	3 114.34	11 778.99	53.59
J-54-1	Indigo and Derivatives—Synthesis	10 187.89				10 187.89			
J-54-2	Indigo—Oxyethylaniline Method	2 154.82					2 154.82		
J-54-2-SW	do Semi Works	2 371.40					2 371.40		
J-54-4	do Sodamide	1 211.23						884.16	327.07
J-54-8	Indigo—Study of Melt	7 167.08						3 228.15	3 938.93
J-54-9	do Powder	764.02							764.02
J-54-10	do Caustic Recovery	1 321.76							1 321.76
J-15-54	Indigo and Derivatives—Plant Process	9 376.20				1 941.87	5 755.58	660.79	1 017.96

DEFENDANT'S EXHIBIT No. 373. 3487

RESEARCH EXPENDITURES FOR PRODUCTS LICENSED FROM THE FEDERAL TRADE COMMISSION.

1916 to JAN. 1, 1923.

		Total	1916	1917	1918	1919	1920	1921	1922
LICENSE NO. 19 CONT'D.									
J-25-20	Study of Analytical Methods—Indigo	2 493.95							
J-391-F-14	Organic Research—Dyes—Indigo	9 630.60		683.40	4 448.53	4 498.67		1 113.51	1 380.44
		114 066.91		768.99	14 929.01	58 503.40	13 396.14	17 665.60	8 803.77
LICENSE NO. 18-A									
SODIUM HYDROSULPHITE									
R-128-B	Manufacture of Sodium Hydrosulphite	43 039.61	95.31	15 970.16	25 770.84	1 203.30			
R-128-B-2	Manufacture of Sodium Hydrosulphite	487.37				487.37			
J-15-65-2	Sodium Hydrosulphite	12 769.68					10 050.49	2 305.47	413.72
J-65-2	do	2 391.91					752.26	861.24	778.41
		58 688.57	95.31	15 970.16	25 770.84	1 690.67	10 802.75	3 166.71	1 192.13
Expenditures for Research Work on Products Licensed from the Federal Trade Commission		291 267.86	662.15	31 617.20	54 349.74	98 050.31	46 663.07	43,510.73	16 414.66

DEFENDANT'S EXHIBIT No. 374.

H. A. METZ LABORATORIES, INC.
Medicinal and Pharmaceutical Preparations
122 Hudson Street

New York, N. Y.,
August 13, 1918.

Laboratories:
644-646 Pacific Street
Brooklyn, N. Y.

Dr. Julius Stieglitz,
University of Chicago,
Chicago, Ill.

My dear Dr. Stieglitz:

In reply to your favor of August 6th, I beg to say that we are interested in your reference to using a catalyzer, which is along the lines of some work we had laid out for ourselves in the same connection, but as yet have not been able to do anything with it. We have found several references in the literature in regard to the use of catalyzers in making various arsinic acid compounds as follows:

Morgan on Organic Arsenical Compounds, Page 210-11 German Patent 264924 by Heyden, using copper nitrate.

German Patent 254092 by Bart, in which he uses copper powder, cuprous oxide, cuprous salts, silver powder and similar products.

German Patent 268172 by Bart.

The patents referred to may be found in Vol. II of "Friedlaender", pages 1030-31. We are using the Acetyl derivative of Paraphenylenediamine.

I, of course, appreciate your offer to be of service to us in case of need and shall be very glad to call upon you, but at the same time, with Dr. Myers at our

laboratory here going through our entire processes for the Public Health Service, and making a number of experiments at our plant, I feel that such information as we have worked out ourselves, and such improvements as we have been able to make, should not go for the benefit of competitors from whom, to say the least, I did not get fair treatment. I am willing, as you know, to go the limit to give the Government the best there is, and am hoping that the standard will be placed at 80 mgms. instead of 70 in the near future and am satisfied that a very large part of my product will pass at 80 mgms. or above. While, as I have always stated, I am anxious and willing to place anything we have at your disposal personally, or at the disposal of the Public Health Service, I can hardly be expected to place it at the service of my competitors, and I am assured by Dr. McCoy, and Dr. Myers personally that whatever I show him, or any facilities placed at his disposal, are to be treated entirely confidential and for the benefit of the Public Health Service and not to be disclosed to competitors. I am quite sure you understand my position in regard to this.

With kindest regards,

Yours very truly,

(Sgd.) H. A. METZ.

HAM/CMR

DEFENDANT'S EXHIBIT No. 375.

July 17/23.

My dear Mr. Kresel:

I have been in rather bad health recently, so much so, in fact, that I have been advised to leave business altogether and at once for a considerable period.

In view of this I trust that it will be unnecessary for me to testify in the Chemical Foundation suit, par-

ticularly as it seems evident that the ground has already been so thoroughly covered that I can add nothing to what has already been said.

Please accept my best wishes for your success and believe me

Sincerely yours,
RAMSAY HOGUET.

[Face of Envelope]
Mr. Isidore J. Kresel
Hotel Du Pont
Wilmington, Del.

DEFENDANT'S EXHIBIT No. 376.

[On Western Union Telegraph Blank]

Received at 820 Market Street, Wilmington, Del.
B24P Q 15 1 Extra
UD New York NY 144P July 18 1923
Isadore J Kresel
220
Hotel DuPont Wilmington Del
Mr Ramsey Hoguet Unfit to be Witness Have Ordered Complete Rest and no Excitement
J A McCreery
MD
234P

MR. HUGHES: If the Court please, we are here for the hearing of Mr. Holdermann, one of the witnesses for the Government, I believe, in the case of the United States against the Chemical Foundation.

MR. GALLOWAY: If the Court please, in accordance with the arrangement which was made on last Friday, when counsel for the Government, as well as counsel for the defendant were present, the United States produced a witness here, Karl Holdermann, of Ludwigshafen, Germany. This we understand is in accordance with the plan which the Court then made of advancing the trial and arranging for the adjournment after the examination of this witness; and it is also our understanding that no opening statements are to be made at this time, but are to be deferred until June 4th, when the trial itself begins.

This witness, of course, is produced out of the order in which we ordinarily would proceed, and we ask to proceed at this time.

THE COURT: You may proceed according to that plan, Mr. Galloway, and you may take your testimony substantially as if before an examiner; and the defendant may reserve its exceptions and protect its rights in the same manner as if before an examiner, and after I have gotten to understand the case, I will pass upon those applications, but not now; that is, it will be impossible for me, without an opening statement, and without a preliminary study of the case, to make satisfactory rulings, either to one side or the other or to myself.

MR. GALLOWAY: I understand then, your Honor, that the objections should be interposed at this time, but the Court will reserve its rulings,

until after it has become more familiar with the case.

THE COURT: Correct, unless there is some objection.

MR. KRESEL: That is, all objections, both as to form, materiality, and irrelevancy.

THE COURT: No, there is no reason why a matter of form cannot be ruled on now as well as later, but matters of substance will have to go over until the case is really opened, and the testimony of this witness may be taken up some time during the regular trial of the case and the objections then ruled upon, probably before the Government closes, so that it may have an opportunity of putting in other evidence in case some matter of substance be stricken out.

MR. KRESEL: Very good.

MR. ANDERSON: I shall call Dr. Karl Holdermann.

KARL HOLDERMANN.

KARL HOLDERMANN was called as a witness on behalf of the Government, and having been duly sworn, testified as follows:

THE WITNESS: Your Honor, I am not very well acquainted with the English language and perhaps it will be necessary for me to ask you to repeat the questions.

THE COURT: If you have any doubt at any time about what the meaning of the question is, you may make such inquiry as will make it clear to you.

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Your name is Karl Holdermann, is it?

A. Yes.

Q. 2. Where do you reside?

A. I am residing in Ludwigshafen on the Rhine.

Q. 3. Ludwigshafen on the Rhine?

A. Ludwigshafen on the Rhine.

Q. 4. That is in the territory of Germany, is it not?

A. Yes.

Q. 5. You are a citizen of Germany, are you not?

A. Yes, I am.

Q. 6. How old are you?

A. I am forty.

Q. 7. What is your business or profession?

A. Chemist is my profession.

Q. 8. Have you any degrees, college degrees, or other degrees as a chemist?

A. Yes, I am a diplomated engineer and Doctor of Engineering, both of the Technical High School, that is a sort of University of Carlsrusch in the Grand Duchy of Baden, or what was the Grand Duchy of Baden before the Revolution.

MR. ANDERSON: If your Honor please, I will state that if the Reporter does not clearly understand Dr. Holdermann's utterances, I hope he will stop him, because of his difficulty with the language.

Q. 9. In what year did you graduate or receive your doctor's degree as engineer and chemist from the school you mentioned?

A. It was in 1904.

Q. 10. 1904?

A. Yes, 1904.

Q. 11. What is your present position, and with what institution or company?

A. I am a member of the firm of the Badische Aniline & Soda Fabrik. I entered the factory in 1906, when I left the university; after I was graduated there I was two years assistant with various profes-

sors, organic and physical and chemical, and from there I went immediately to the Badische Aniline & Soda Fabrik in the spring of 1906, and I was there continuously up till now, and in 1920, I became assistant manager of this firm.

Q. 12. What is the general character of the business of this company which I will call for convenience the Badische Company?

A. We were generally manufacturing dye stuffs of most various kinds, and mineral acids and some salts, and in the recent times, a few years ago, we had started to manufacture ammonia in the synthetic way, you know, by the so-called Haber-Bosch process.

Q. 13. You say that you became assistant man-

A. Yes.

ager of this concern in 1920?

Q. 14. Before that time you had been employed as an employee of the concern, had you not?

A. As a chemist.

Q. 15. As a chemist of the concern, Dr. Holdermann, in your position with the Badische Company, prior to and since 1920, have you had anything to do with its patent department, or the handling or dealing with its patents?

A. Yes, I was with the patent department nearly all the time. I was in the Badische Aniline & Soda Fabrik already in 1906.

Q. 16. Does this company own or control any considerable number of patents?

A. Yes, we have quite a number of patents. We are taking out more than one hundred patents in Germany every year, and the more important of them are also applied for in the foreign countries. We have hundreds of patents in the foreign countries.

Q. 17. You take out those patents in Germany, and then in foreign countries; does that include the United States?

A. Yes. First in Germany, then in the foreign countries.

Q. 18. In connection with the patent department, do your duties require you to familiarize yourself with the character of these patents, their use and values and other incidents in connection with them?

A. Yes.

Q. 19. Do you know how many such patents the Badische Company owned in the United States in 1917?

A. There were about between 450 and 500 patents which were owned by the firm at the beginning of the war.

Q. 20. This is the case of the United States against The Chemical Foundation, Inc., involving questions as to the seizure and transfer of certain formerly German owned patents to The Chemical Foundation. Have you examined the list of patents accompanying the bill of complaint in this case, to ascertain if it includes patents of the Badische Company?

A. Yes, it includes all our patents.

Q. 21. It does?

A. Yes, that we had at the time.

Q. 22. All the patents that you had in the United States?

A. All the patents we had in this country.

Q. 23. Does it include any applications for patents then pending, which have since been granted?

A. Yes, all the applications which were then pending, and most of them have matured into patents since then.

Q. 24. When I say pending, I mean 1917, when the United States and Germany went into the war?

A. Yes.

Q. 25. Did it also include any trade marks or

applications for trade marks by the Badische Company?

A. This list of The Chemical Foundation?

Q. 26. I mean the seizure and conveyance to The Chemical Foundation, which is described in this bill of complaint?

A. All the trade marks.

Q. 27. Will you please state whether or not you have familiarized yourself with the situation sufficiently to say how many of the patents, applications for patents, trade marks and applications for trade marks which were then owned or claimed by the Badische Company, were seized by the United States and transferred to The Chemical Foundation?

A. Everything, all of them have been seized.

Q. 28. About how many?

A. About how many? About between 450 and 500 patents, and some few dozen of trade marks.

Q. 29. Can you give me any classification of the patents so seized by the United States and transferred to The Chemical Foundation as to their character; have you any means of classifying them in classes?

A. Yes, of course in rough lines, these patents cover nearly every field of chemistry, but most of them are for dye stuffs, wool dye stuffs, and vat dye stuffs, pigments and everything, and auxiliaries for dyeing processes, that is one group, and the other group for fixed nitrogen and the most important of them are those for the Haber-Bosch process and auxiliary processes therefor, and there is another field for synthetic tanning materials. That is a new art.

Q. 30. Have you a complete list of the patents of the Badische Company and applications for patents and trade marks, etc., which were so transferred?

A. Yes, we have.

Q. 31. Seized by the United States for The Chemical Foundation?

A. Yes.

Q. 32. Can you file that list as part of your deposition; have you it so made out separately that you can file it?

A. Yes.

Q. 33. Will you produce it?

A. It agrees with that which has been filed by The Chemical Foundation, and which is contained in the bill of complaint of the United States Government. I do not think there is any difference, no essential difference.

Q. 34. No essential difference?

A. No.

Q. 35. Then the patents as described in the exhibit with the bill of the United States Government, are the patents to which you refer, the patents and applications for patents to which you refer, to the Badische Company?

A. I think with a few exceptions.

Q. 36. That is substantially correct, is that true?

A. Yes, substantially correct.

Q. 37. Described as Badische patents in that exhibit?

A. Yes.

MR. ANDERSON: Have you got that exhibit here?

THE WITNESS: To be stated correctly, there are a few patents among them which have been taken out by our firm for the electric light process of fixing nitrogen. These patents have been transferred to the Norak Hydro Elektrisk Kdaelstof Aktienselskab.

MR. KRESEL: I am sorry I did not get that. Will you please repeat that?

THE WITNESS: Norak Hydro Elektrisk Kdaelstof Aktienselskab.

MR. WARFIELD: Do you intend to prove title by this witness to anything?

MR. ANDERSON: No, I have to identify the patents, because his evidence would only come after proof of title. Therefore, I have to identify them.

MR. WARFIELD: So long as it is understood that this is not offered to prove title.

MR. ANDERSON: Of course, if your Honor please, we will introduce the evidence in its order showing the seizure by the Government and the transfer to the Alien Property Custodian. I do not assume that they will question the title of the Government. If they do, they will question their own; but I have to identify these patents at this time, in order that I may ask as to what the patents are and what value.

THE COURT: Are you going to rely at all upon the evidence of this witness with respect to title?

MR. ANDERSON: Not with respect to title, unless it might be some evidence of this witness would be pertinent to title; but I am not introducing it for that purpose, because we are going to show seizure by the Government of the United States, that is the only title we are interested in, and we are not undertaking to recover the patents for the Badische Company. Therefore, the title is not involved.

Q. 38. Turning to the printed bill of complaint——

MR. KRESEL: May I interrupt you for a moment? The witness was telling us of some of the patents that had been transferred to this Norwegian company. He said some of them, and I would like to have him identify, if he will, at this time, which were so transferred.

MR. ANDERSON: Certainly.

MR. KRESEL: If it is not interfering with your line of examination.

MR. ANDERSON: As soon as I get identification of the whole, I will ask him to identify, by eliminating those that were transferred.

Q. 39. Turning to the bill of complaint in this case, the printed bill, and exhibit thereto, I find on page 133 to 140, the following patents and applications were demanded under report No. 33,051, trust No. 734 of the Badische Aniline & Soda Fabrik Co. Is that the list of patents to which you refer?

A. Yes, these are the applications and patents of our firm that have been seized; yes, that is the list.

Q. 40. Now, Dr. Holdermann, you spoke a moment ago of some of those patents having been transferred to a Swedish company. Can you take the list and state just which patents, by number, were so transferred?

A. They have not been seized because they did not belong to our firm, but to a firm of a neutral country. It was a Norwegian company, and a few others. Here are three, 1,095,425——

Q. 41. 1,095,425?

MR. KRESEL: On what page of this bill of complaint do you find that, please?

MR. ANDERSON: Page 138.

THE WITNESS: 1,095,425, that is on page 138.

MR. KRESEL: And what is the number again?

THE WITNESS: 1,095,425, 1,095,426, 1,095,427, those three.

By MR. KRESEL:

Q. 42. Have you got that, the number is 1,095,425, 1,095,426 and 1,095,427, is that right, Doctor?

A. Yes, that is it. I think that is all.

MR. KRESEL: Just those three?

A. Here is another one, No. 884,919. Is it in the

list? No, that is not in. No. 884,920; no—they are not in. I think that is all. That is all. I cannot find any others but these three.

By Mr. Anderson:

Q. 43. Doctor, you spoke of several classes of patents included in the list so seized; among others, the Haber-Bosch patents as you described them?

A. Yes.

Q. 44. Will you state briefly what is the general character of those patents; that is, what they are intended to cover and what they did cover?

A. These patents for the Haber-Bosch process are a process for fixed nitrogen. Nitrogen, which you know, is about four-fifths of the air, and nitrogen is valueless when in this form. It must be chemically combined in some form or other- and then it is converted into a very valuable fertilizer, and the demand for fertilizers has increased every year and it has heavily increased every year.

Many attempts have been made to combine the nitrogen of the air to form fixed nitrogen, as it is called, and this Haber process is one of these processes which is for such a fixation of nitrogen; and I can say that the process has proved the most efficient of all the processes which have hitherto been invented. It is the only one that has come to stay, and it is based on the fact that the nitrogen is combined with hydrogen. It is the gas which is contained in illuminating gas, and by the influence on certain solid masses, so-called contact masses, and thereby ammonia is formed, which is a gas which is dissolved in acids, sulphuric acid or hydrochloric acid, and is traded as ammonium sulphate, ammonium chloride, and so on, and forms a very valuable fertilizer.

Q. 45. How many of those patents covering what are known as the Haber-Bosch process were included among the patents which you have identified as having

been seized, which you claim to be the property of the Badische Company?

A. Taking all the patents that belong here too, not only those which have been registered by Professor Haber, but those for machinery, for apparatus, and for the conversion of gaseous ammonia into the salts I have spoken of just now, and for converting ammonia into nitrate, another form of fixed nitrogen, and for preparing the hydrogen which is necessary for its preparation in the whole class of patents which belong thereto, there are about 58.

Q. 46. 58 patents?

A. 58.

Q. 47. Are all these patents in commercial use at the present time?

A. Not all of these.

MR. KRESEL: In Germany, did you say?

MR. ANDERSON: I will come to that.

MR. KRESEL: At the present time?

MR. ANDERSON: I will say 1917?

MR. WARFIELD: Do you mean patents?

A. (Continued.) For more than ten years.

MR. ANDERSON: If you gentlemen will wait a little while, I will bring out what you want. If I do not, you can bring it out on cross-examination.

Q. 48. Were those patents in use in Germany, commercial use in Germany in 1917?

A. Yes, they were in use in 1911 and 1912.

Q. 49. Are they in commercial use in Germany today?

A. Yes.

Q. 50. Do you know whether they had been used in America in 1917?

A. I do not know. Some hints are given somewhere in the periodicals that American firms made experiments along the same lines.

Q. 51. Doctor, do you know how much ammonia,

or whatever the product is, that is produced from these patents, is now being produced in Germany annually under these patents?

A. The amount of ammonia, ammonia salts, that is being manufactured now in Germany corresponds about to 300,000 metric tons.

Q. 52. Each year.

A. 1,000 kilograms each.

Q. 53. Each year?

A. Each year, yes. Apart from strikes and so on, the capacity of the plant is about 300,000 tons or more.

Q. 54. Are you informed as to the commercial value of patents of this character?

A. Yes, I am informed.

Q. 55. In your position as assistant manager and formerly chemist, still chemist of the Badische Company, have you had to deal with the question of the commercial value of patents?

A. Yes, in our patent department we did not only deal with applying for patents and following them through, but also with acquiring inventions and granting licenses and everything which belongs to the utilization of patents; and we are often discussing the value of patents.

Q. 56. What was the fair commercial value of these so-called Haber-Bosch patents, the 58 you mentioned, in the year 1917-1918?

MR. KRESEL: Just one minute, please, Doctor. Your Honor will entertain an objection to this question at this time, because of course, that goes to the entire substance of this man's testimony. We object to that on the ground that this witness has not been qualified to give testimony as to the value of the patents.

THE COURT: I will hear you, Mr. Anderson.

MR. ANDERSON: He has stated that for ten years he has been in the patent department of the

Badische Company; that he has been the assistant manager since 1920; that he has charge of the matters relating to the licensing and dealing with these patents and their production and knows their commercial value; has had to deal with the question of their commercial value. The question of the value of his testimony or the weight of his testimony is all a question for argument before the Court; but that undoubtedly, I should say, qualifies him to express an intelligent opinion as to their commercial value. If they wish to test that opinion, the basis of it, break it down, I suppose they are at entire liberty to do so. But he may express an opinion as to the fair commercial value of these patents as a man informed on that subject.

Mr. Kresel: If your Honor will permit me, this witness has so far testified that he has no knowledge of these Haber patents having been used in America. Certainly, what the value of these patents was in Germany in 1917 is not going to help us in this case. The question here is going to be as to the value of the patents here in the United States, in 1917—in 1919 rather, when they were sold. This witness has not shown any familiarity with the situation in the United States with the position of the art, with the use of these patents here in the Unted States. On the contrary, he has said that he simply heard in some periodical that some attempt had been made to use a similar process. He has not stated even that the Haber process was used here.

We therefore contend that the witness is not qualified to give any opinion as to the commercial value of the patents in the United States, and we contend that the value thereof in Germany, under conditions which do not prevail here, and to peo-

ple who have peculiar means of making use thereof, is not a test by which we can arrive at a conclusion as to whether a price paid here was or was not adequate.

THE COURT: It seems to me, Mr. Anderson, that the question lacks a proper foundation at the present time, for two reasons. I make this statement, not on a thorough consideration of the issues involved by the pleadings in this case, but from a general impression that I gather from the issues in this case, from the various matters that have come up pertaining to it. But upon that slight knowledge, my impression is this: That you are asking for an abstract value of the patents; that you are asking for an abstract value with regard to the patents in Germany; that you are asking for an abstract value with regard to the patents in Germany in 1917.

My thought is, on the information that I now have, that the only value that will be of interest or vital in this suit is the value in America, the value in America at the time of the sale, whenever it occurred; 1919, Mr. Kresel?

MR. KRESEL: 1919, sir.

THE COURT: That value in America in 1919 of these patents would not be an abstract value, but would be the fair market value of these patents.

For those reasons, I am under the impression, Mr. Anderson, that the answer as given would not be relevant, material or helpful in the final determination of the case. If you want to lay further foundation, you may. If not, I shall overrule the objection and allow you to take the testimony; overruling the objection solely on the theory that I am not wholly informed, but allowing the testimony to go in so that you may press

your objection at a later stage of this case, Mr. Kresel.

MR. ANDERSON: I rather concur in your Honor's view. You were probably reversing the order. I was going to ask the questions to bring it up to 1919 in America; but probably in the view that your Honor takes, I should have laid that foundation further.

THE COURT: You withdraw the question, Mr. Anderson?

MR. ANDERSON: I withdraw the question for the present.

Q. 57. Dr. Holdermann, under these patents so-called Haber patents, would it have been practicable for a competent chemist to have manufactured the products which you have described as being produced thereunder, in the United States, by use of the patents?

A. Of course, it must have been.

Q. 58. All these patents disclose the full process, the methods of manufacture, both chemical and physical in connection therewith?

A. Each of the patents discloses fully and frankly the invention for which it is; which it claims. There are, of course, in the manufacture of ammonia some steps which are of public dominion, and they are not disclosed in the patent; some steps in the manufacture of ammonia belonging to the old art, in the prior art, and that is not disclosed in the patent, of course. The patents relate to new inventions simply.

Q. 59. In other words, the patents covered the methods of the new invention of producing the elements out of which the ammonia was produced by well-known processes when you had those elements; is that true?

A. Yes.

Q. 60. With those patents, then the products which you have mentioned, ammonia and the other

products described, and the sulphates, could have been produced in each case without any difficulty by competent chemists; is that true?

A. Yes.

Q. 61. Are you familiar with the extent of the use of those products in the United States?

A. I already mentioned that they had been used to a certain extent.

Q. 62. I mean ammonia and the other products?

A. (Continuing.) By an American firm, but Mr. Kresel was wrong in assuming that this was the only knowledge of mine of the state of the art in America.

THE COURT: I did not quite hear. Were you trying to get the witness to answer as to the use now or prior?

MR. ANDERSON: I said 1919.

THE COURT: Will you repeat the question?

(Question repeated by the stenographer.)

A. It relates to the state of the art before 1919.

Q. 63. Now, are such products as ammonia, as produced under these patents, in common use in the United States for commercial and fertilizer purposes?

A. Now?

Q. 64. Yes, and were they in 1917 and 1919?

MR. KRESEL: I do not quite understand the question. Are you asking him whether products produced under the Haber patents were in use?

MR. ANDERSON: No, I am asking him whether ammonia, such as may be produced under the Haber patents, is an article of general commerce in the United States, used for commercial and fertilizer purposes, if he knows of it, and was it so used in 1917 and 1919. Your Honor will understand, I am not putting this evidence in the regular order; I will prove that by other witnesses.

THE COURT: Yes, I understand you are embarrassed by that.

MR. ANDERSON: I will prove all that by other witnesses. I am trying to do the best I can.

THE COURT: At the same time, Mr. Anderson, I shall have difficulty with getting the value out of this and probably the other side will, unless they know, unless they are informed by you, from time to time as you go along, of just what point you are directing this testimony to.

MR. ANDERSON: I will be very glad to do that.

THE COURT: I think that is your difficulty, Mr. Kresel.

MR. KRESEL: Entirely so.

A. Yes, they are being used to a very large extent.

Q. 65. And were they in 1919 and 1917?

A. Yes, and long before.

MR. ANDERSON: Without putting this on the record, I will, of course, at the proper time, by American witnesses, prove the commercial uses and values of all the products produced of this character. I only want to lay a foundation for him to express an opinion as to that.

Q. 66. Now, Doctor Holdermann, taking into consideration the character of these products, their commercial use or capacity for commercial use in the United States, which you have mentioned in the year 1919, and your knowledge of the subject, as derived from your handling of these patents for your company, will you say what was or what would have been the fair commercial value of the so-called Haber patents in the year 1919, at which time the alleged sale in this case took place?

MR. KRESEL: Just a minute, Doctor, please. If your Honor please, we do not yet consider that the proper foundation has been laid for this witness to express an opinion as to the commercial value of these patents; but, understanding your

Honor's ruling heretofore made, that you will take the testimony subject to our right to move to cross it out later, of course, I cannot urge anything further.

THE COURT: Did you want to address yourself in reply to Mr. Kresel, Mr. Anderson?

MR. ANDERSON: I did not, further than to state that of course at the proper time we will prove more clearly the extent and character of this use. My purpose now is only to show that the witness has a knowledge of the commercial use of these products, and that his position as a patent expert in charge of the office of his company in Germany dealing with these patents, and their commercial uses in both Germany and here, enables him to speak with reasonable accuracy as to their commercial value. I might say that I will follow that up by asking the direct question what his company would have paid for these patents at that time.

MR. KRESEL: Yes, but Colonel Anderson, it seems to us that the value of these patents should be determined in relation to our situation here in the United States and not in relation to the ability of the Germans to make use thereof. Now, it seems to me that no foundation has been laid as to the conditions here in the United States in April, 1919, when this sale was made, as to the ability of our manufacturers to make use of these patents.

This witness has not yet stated that anybody used these Haber patents here. At least I have not so understood him to say.

THE WITNESS: Yes, I said so.

MR. KRESEL: I have understood him to say that he has known of some one firm here attempting to manufacture nitrogen or get nitrogen out of the air, but I have not understood him to say

that that was done under this Haber patent. Colonel Anderson, if that is the fact, if I may suggest, I wish you would develop that end of it; but until it is made to appear what the conditions were in the United States as to our ability to use these patents or as to the results of any attempts to use them theretofore, it seems to me that this witness has not anything upon which to base an opinion as to the value of these patents to anybody in the United States.

At the proper time we shall show your Honor of course that the Germans have greater facilities to make use of these patents than people in the United States have.

Moreover, may I also point out, if your Honor please, that there is at least in my mind some confusion as to which patents the witness is now testifying about, whether it is the German Haber patents or whether it is the Haber patents that were filed here in the United States. I think, Colonel, if you make inquiry, you will find that these patents were not similar. At all events, I am only pointing that out as indicating that there is some confusion.

THE COURT: Shall we clear that up first, Mr. Anderson?

MR. ANDERSON: I will, if your Honor please; and I would like to say further, as this is going on the record apparently, and I do not want to leave it without answering, the value of these patents arises from two sources, at least, to say nothing about others. One is the right to manufacture the goods under the patent and the second is the right to control the sale of the goods under the patent. Therefore there might never have been a product manufactured in the United States; it might never have been licensed in the United

States. But the ownership of the patent in the United States, if the market for the product was large, would be enormously valuable, either to manufacture or to control the importation. Therefore, the market being here and the patent presenting a condition under which the stuff can be manufactured or its importation or sale controlled, which is the same thing, because you can license the control, the value arises from those sources. Now Mr. Kresel is addressing himself to the weight of the testimony and not to its admissibility. It may be that unless we develop additional facts showing the application of this testimony to conditions in the United States in 1919, that the weight of the testimony may be or may not be affected. That will be a question of argument before your Honor when you come to consider the testimony. But it is admissible for what it is worth, the man having shown a knowledge of these conditions. I will clear up the question I asked the witness. I do not always understand his answer very clearly. I asked the witness this question, whether or not under these patents as filed in the United States—I have not said anything about the German patents—any person in the United States could manufacture these articles which he described as being produced under these patents; and he said that any competent chemist could do so.

Now therefore that being the case, it is not material whether the German patent or the other patent maybe identical in terms, provided the product could be produced under the patent as filed in the United States by a competent chemist. Then comes the question whether there is a commercial market or whether that market can be controlled through the use of this patent.

THE COURT: I believe I understand you, Mr. Anderson.

MR. KRESEL: Your Honor, would you pardon me a minute?

THE COURT: Yes, I will hear each side.

MR. KRESEL: Colonel Anderson has spoken of the right to control the sale of imported articles made under this patent. It has not yet been made to appear that this was a product patent. On the contrary we think it is only a process patent; so that importations of the article would not come under the patent here.

MR. ANDERSON: I understood him to testify that it covered both product and process.

MR. KRESEL: No, the witness was not asked and did not testify to anything like that.

MR. ANDERSON: I certainly understood him so to say in describing the patent.

THE COURT: I did not get his answer. Apart from that, is there this difficulty? It probably does not apply now, but the arguments of counsel would seem to bring this question to my mind, particularly your statement that you propose to follow it up by ascertaining from this witness what his company would be willing to pay therefor. You understand that I am practically in complete ignorance of the situation, so I will ask you to bear with me and help me on it if you will just a moment.

Could his company—I am asking now purely as a matter of law—have been a competitive bidder in the sale of these patents in 1919?

MR. ANDERSON: I do not think so, sir.

THE COURT: Then does that present a question as to whether his answer to that inquiry could be of any value here?

MR. ANDERSON: I do not think it does. If the

company could have been a competitive bidder, it would have gladly paid this price. Therefore, it regarded the commercial value as that amount. That is one of the evidences. It may not be conclusive evidence. It may have been barred by certain conditions then existing by the war—I do not recall how far—because there were a lot of licenses issued and things of that sort.

THE COURT: I am wondering this, Mr. Anderson, if you will help me just a bit there.

MR. ANDERSON: Yes, sir.

THE COURT: As I understood you a moment ago, you are going to develop eventually the market value, a market value.

MR. ANDERSON: Yes, sir.

THE COURT: As I understood you.

MR. ANDERSON: So far as I can do it, sir.

THE COURT: So far as you can. Now, if the German bidders were barred by operation of the law upon bidding in that market, then might not what the German corporations might be willing to pay or might be willing to have paid for those patents, mislead us rather than guide us in a determination of the market value? Because, if what the Germans would have been willing to pay, if they could have been bidders, would have produced a higher price, it seems to me at the moment that possibly having them tell us what they would have been willing to pay, could they have been a bidder, rather confuses than clarifies.

MR. ANDERSON: If your Honor please, I will undertake to answer your Honor's question. This is of course dealing with a subject that I confess entire igorance of, that is patents. I do not know anything about patents in chemistry. Here, the elements of value, however, are well understood. They are derived from various sources, all of

which must be considered. What one person is willing to pay is evidence of value. What one person might be willing to pay would be evidence of value. Another is, what are the commercial advantages that can be derived from the use of the patent? That is an element of value. That arises from two sources: experience, and the estimate of experts as to what use can be made and what the value of that use is.

In the last analysis, evidence of value of a thing of this kind is largely a matter of the judgment of the experts, in which they may differ unquestionably. Therefore the various elements may be developed.

Now I want this witness to state what in his judgment the patents here, sold in the United States, taken in connection with the market of the United States, their capacity for production and their capacity for control,—what in his judgment, as a man dealing constantly with this subject, and familiar with these patents and their capacities, would be worth, would have been worth in 1919. I do not care to whom they are worth it. If there was any person in the world who would have given that price, we have that value.

THE COURT: Any person in the world who could have been a bidder.

MR. ANDERSON: I do not think it is necessarily confined to a bidder, if it was a bona fide desire to get them at that price. He might have bid through some one else. If he is willing to give that price, that is evidence it may be worth that price. It may not be conclusive evidence, but it is evidence.

THE COURT: You understand I am going to take your testimony.

MR. ANDERSON: Yes, I think we have argued

more the value of the testimony than its admissibility.

THE COURT: I am not sure, and the reason I am asking you these questions——

MR. ANDERSON: I am very glad to have you do it, if your Honor please.

THE COURT: (continuing) is for my personal benefit, my official benefit, but mainly so that if this objection is pressed eventually, and I should decide to rule against you on any of these grounds I should be sorry if I had not presented these grounds to you now, so that you can meet them at this time rather than after the witness is gone.

MR. ANDERSON: I think your Honor is under a great handicap in not having the case presented in a proper way, and I hope you will not hesitate to ask me any questions. I find myself handicapped in examining this witness, because I will prove these things by somebody else.

THE COURT: But the difficulty there is that even if you had proved this very evidence by as many witnesses as you could put on the stand, the testimony of those witnesses would not in itself enable this witness to answer your present question. That is, the testimony of the other witnesses might be valuable, but they would not establish any value of the right of this witness to answer that question. I have my doubts about his being in a position at the present time, from the testimony given by this witness, to answer this question. I think I have indicated the grounds of those doubts and you may take the answer.

MR. KRESEL: Your Honor will pardon me just a minute? May I make the suggestion that Colonel Anderson develop from this witness as to whether he was present in the United States during 1917, 1918, and 1919.

THE COURT: You may, if you desire.

MR. KRESEL: I do not want to interrupt Colonel Anderson's examination of this witness.

THE COURT: You may if you desire, Mr. Kresel, prior to that answer being taken, cross-examine him as to that particular point.

MR. KRESEL: If you will permit me. May I, Colonel?

MR. ANDERSON: You may, yes, sir.

By MR. KRESEL:

Q. 67. Dr. Holdermann, in 1917 were you in the United States?

A. No, there was a war between Germany and the United States. But that is not the only way of getting information.

Q. 68. Won't you just please answer my question?

A. Yes.

Q. 69. In 1918 were you in the United States?

A. No.

Q. 70. Or in 1919?

A. No.

Q. 71. When did you first come to the United States subsequent to 1919?

A. Last year, 1922.

Q. 72. Prior to 1922, had you ever been in the United States?

A. No.

MR. KRESEL: That is all I desire to ask him at this time.

By MR. ANDERSON:

Q. 73. Dr. Holdermann, I understood you to describe the character of these patents, what they covered. I would ask you whether they covered, the 58 patents, production of products and processes of production? Explain that, please, to the Court, just what they did cover, if you can do so. I do not mean to go

into technical details. I just want you to say what they covered in a general way.

A. These patents covered certain improvements, first, for the starting material, hydrogen and nitrogen, and for the art of combining these two, to form ammonia; conditions which are necessary to effect this combination; then means for separating the ammonia from the mixture which is formed, transforming the ammonia into tradeable form, in which it can be sold or treated, into salts.

MR. KRESEL: May I interrupt you, Doctor. Will you permit me, Colonel Anderson?

MR. ANDERSON: Yes.

By MR. KRESEL:

Q. 74. What we want to find out, Doctor, is this. Do you claim that under those Haber patents no one could manufacture ammonia unless he had a license from you?

A. Yes, of course.

Q. 75. Is that your claim under the patent?

A. Every patent creates a monopoly and nobody can manufacture under these patents unless they get a license. Otherwise, he infringes the patent.

Q. 76. You did not understand. We understand your claim to be, that no one could manufacture ammonia by the Haber practice without getting a license. But my question is, do you contend that no one in the United States was permitted to make ammonia or sell it here unless he got a license from your company, no matter how it was made? You do not claim that, do you?

A. I do not think there is another commercial way of making ammonia synthetically. No process has been known so far.

THE COURT: Will you repeat the question and see if he can answer it directly.

(Q. 76. repeated.)

A. No, we do not claim that. Ammonia can be prepared by coke-ovens. It has been manufactured that way for a hundred years. Of course, that depends on the production of coke.

THE COURT: Then is it clear that none of these patents were product patents; that they were all process patents?

MR. ANDERSON: No, sir; it is not clear. This particular patent did not cover the sale of ammonia. I will ask this question.

By MR. ANDERSON:

Q. 77. Was there any other commercial method of making synthetic fixed nitrogen and ammonia in quantities at the time these patents were sold in 1919, so far as your knowledge goes?

A. No.

MR. KRESEL: Where?

MR. ANDERSON: Any where.

Q. 78. Was there in America, so far as your knowledge goes?

A. Not in America, and not in other countries.

MR. KRESEL: That does not answer the question, I submit. That does not make it a product patent by any means.

THE COURT: If the product could not be manufactured save by this process, if there was no other known process——

MR. ANDERSON: If you could not use the process, you could not make it. All that enters into value. It is argumentative as to what it is. But that is all I want.

Q. 79. Dr. Holdermann (subject, of course, to objection), I wish you would state from the knowledge which you have already indicated, what, in your judgment was the fair value of these 58 so-called Haber patents?

MR. KRESEL: The fair market value?

Q. 79. (continuing)—The fair market value, yes, of these 58 so-called Haber patents in America, that were issued in America in the year 1919, when they were seized and transferred to The Chemical Foundation?

MR. KRESEL: If your Honor please, we object to that question upon the ground that this witness has not been qualified to give testimony as to the market value of these patents in the United States.

THE COURT: I think I understand your grounds; unless you care to discuss it further on either side.

MR. KRESEL: No, your Honor.

THE COURT: Because I have indicated the doubts I have about the admissibility of this testimony on the foundation that has been laid by this witness. I have indicated that so as to establish a better foundation, if that is available, from this witness. I will overrule the objection solely on the ground that all objections going to substance are to be overruled and disposed of at a subsequent stage of this case.

MR. ANDERSON: I am going to ask a good many questions that will probably come under the same line.

THE COURT: I understand.

MR. ANDERSON: Of course, we will discuss that at the proper time.

THE COURT: If you prefer, Colonel Anderson, that I make inquiries as you go along and express doubts, I will be very glad to do so.

MR. ANDERSON: I will be very much obliged to your Honor if you would, because we are proceeding in such a way here, that it is almost im-

possible for me to keep in mind what are the issues.

THE COURT: Then there will be no objection to discussing any question of substance on either side.

MR. ANDERSON: Certainly not. I would be very much obliged if you would.

Q. 80. You can answer that question now, subject to the objection?

A. After careful consideration of all the circumstances that I could get, not from personal presence here in the United States, but from all sources, periodicals, and all other sources, I think a very conservative estimation of the market value of these United States patents for the Haber ammonia processes, and no others, is about seventeen millions of dollars, for these fifty-eight.

Q. 81. Are you speaking now as of the year 1919?

A. 1919, at the date of transfer.

Q. 82. Do you have to deal with the purchase of patents by your firm?

A. Yes, that is all in the charge of our patent department, purchase and selling, licenses, and everything which is connected with patents.

Q. 83. If your firm had not had any interest in or owned these patents in the United States in the year 1919, would you have been willing to pay that price for them?

A. I think I would have paid this.

Q. 84. You are speaking now entirely of the United States patents, are you?

A. Of course, nothing else.

Q. 85. You spoke of the synthetic tanning materials. Approximately how many of the patents of your company which were seized by the United States, covered synthetic tanning materials?

A. There are not so very many for synthetic tanning materials, but they are very important. I think they will be about ten patents for this field, ten to fifteen.

Q. 86. Were those patents in commercial use in 1919?

MR. KRESEL: Where?

MR. ANDERSON: In Germany.

A. They have been to a certain extent, but to a very small extent. They have been developed just before the war. Then the war broke out and the connections with your country have been interrupted and patents could not be developed. It was just in the beginning.

Q. 87. Were these patents as filed and granted in the United States, substantially the same as the patents covering the same processes or products granted in Germany?

A. Yes, practically the same.

MR. KRESEL: How can this witness say? It does not appear that this witness has any knowledge upon the subject. I do not think we should take his conclusions.

MR. ANDERSON: But he is the man who handled them.

MR. KRESEL: He is the man in Germany who knew about the German patents; but whether the United States patents filed here—it does not appear even when they were filed—were the same as the German patents, has not yet been made to appear.

MR. ANDERSON: If he does not know, he can say so. If he does know, he can say so.

THE COURT: My difficulty is this, whether the best evidence of that is not the copy of the German patents themselves.

MR. KRESEL: Both patents.

MR. ANDERSON: I think it is very probable, if we were proving title, that would be true; but if he handled, if he secured both, he can say if they are substantially the same.

THE COURT: Are you not asking him for a conclusion, not a fact?

MR. ANDERSON: No, sir; if I may submit to your Honor. It seems to me that this witness has testified that he handled the procuring of these patents in foreign countries as well as in his own country. Now, if he handled the procuring of those patents, he can say whether they were substantially the same in the United States as in Germany. I can, at the proper time, if necessary, produce all these patents or extracts from them. I do not assume anybody would want them. But if he handled both, he can testify they are substantially the same. As to what they contain, as to what the patents contained in terms, it is quite probable that the patent itself would be the best evidence, but that they are similar in terms, and similar in character and cover certain rights, I think his testimony would be entirely admissible because he handled them. He said that clearly before, and I am going to have him say that over again.

MR. KRESEL: Of course, your Honor knows vastly more about patents than I hope to know; but your Honor certainly knows—that much I learned from my brother Warfield last night—that the value of a patent may very largely depend upon the claim contained in the patent and the claim in the American patent may be vastly different from the claim in the German patent.

How does it help us to have this witness conclude, without documents before him, that the two patents were substantially alike? It does not

lead us anywhere. Wherein is the difference, if they are only substantially alike? Where is the difference? How is the Court going to judge whether that difference is material, upon the question of value? I think your Honor has well indicated that if this is material at all, the two patents ought to be presented.

MR. ANDERSON: I think, sir, that we are discussing—if I may submit, your Honor,—we have been discussing all the morning the value of evidence as distinguished from evidence, the admissibility of evidence.

THE COURT: We will take a recess today, Colonel Anderson, at about twenty-five minutes after ten by that clock, by reason of a noon-day luncheon engagement I have, and then we will begin again approximately at 2 o'clock.

MR. ANDERSON: Yes, sir.

THE COURT: We cannot tell just exactly when that luncheon comes.

MR. ANDERSON: I would like to go back and find out what was the question which I asked the witness. I believe I was arguing the question before your Honor when we stopped.

THE COURT: Yes.

MR. ANDERSON: What I want to say is this—I want to add to what I did say—that while I do not have to say because it has been perfectly obvious that I know nothing of the chemical side of patents, and do not intend to, yet the fact is that this witness is an expert in handling patents, and was the man who represented this company who acquired these patents in Germany and in the United States. He has testified to that, and will testify so again. Now, what the value of his evidence will be when we get through with producing chemical evidence of this stuff in the United

States, will be a question of argument; but for what it is worth, it is admissible, as one of the many factors that will be presented here tending to show or not to show, the value of these patents at the time they were sold by the United States to The Chemical Foundation. I do not want at this time to argue any question of the weight or importance of this evidence.

THE COURT: No.

MR. ANDERSON: Only that it is admissible on the record. I am perfectly willing, and it will save the time of the Court, and save the time of Counsel, to have your Honor reserve your ruling on any of these questions. I think I am entitled to have the witness answer the questions.

THE COURT: I will rule on questions of substance, but the only reason I am making inquiry is so that if you have overlooked something, you may show it in your testimony.

MR. ANDERSON: I cannot recall this witness. He will be in Germany. Your Honor is quite right. You want to get at the facts, and the Government wants to get at the facts, whatever they are.

THE COURT: On that ground, the objection will be overruled. My thought is that in the absence of those patents, the other side had no opportunity to show that this witness may be mistaken in his conclusions; but upon the grounds under which the testimony of this witness—under the arrangement by which the testimony of this witness is taken, the objection is overruled.

A VOICE: Do you want that question, Colonel Anderson?

COLONEL ANDERSON: Yes.

A VOICE: "Q. Were those patents as filed and granted in the United States, substantially

the same as the patents covering the same processes or products granted in Germany?"

MR. KRESEL: Pardon me a minute. I do not understand this arrangement of stenographers. I had understood that the stenographers at this table, were the stenographers appointed by the Court to report this proceeding.

THE COURT: Is not the stenographer who read the question, one of your gentlemen, Mr. Smart?

THE OFFICIAL STENOGRAPHER: No.

MR. ANDERSON: Then I will ask Mr. Smart.

The question was repeated by the stenographer as follows:

"Q. Were these patents as filed and granted in the United States substantially the same as the patents covering the same processes or products granted in Germany?"

THE COURT: I have not any objection, Mr. Anderson. You may have as many men taking down the testimony as you like. They have no standing in this Court, and the testimony and the notes so taken will be only for your personal use and will not constitute the record.

MR. ANDERSON: That is understood. The record will be made by the stenographer your Honor has appointed under the conditions which we have already discussed.

Q. 88. Now, will you answer that question?

A. Yes. Perhaps I may answer at length, so that it can be understood.

Q. 89. Go ahead and answer any way as you please.

MR. KRESEL: Not as broad as that.

MR. ANDERSON: If he goes off the track, you can stop it.

A. So far as it will help the case; I can tell you

when an invention is made in our factories, the invention goes to the Patent Office, and the inventors come to our patent department, and there discuss the inventions, and I and my assistants are drafting the specification for the German applications, and I was personally in all of these German applications for these tanning substances, and after a while, we were filing the applications abroad, and I took the German texts, and I make up the foreign texts in pretty nearly the same language. There are only changes which are required by the difference in the patent laws, and apart from these strictly technical differences, there is no change in the material part of the application, and I have drafted a good part of these tanning, or nearly all of these American patents for tanning, and I cannot find that there is a substance which is claimed the process, on the technical part of it, which is quite the same as that in Germany. Is that sufficient? I think that is clear.

Q. 90. Could a competent chemist or manufacturer check the patent, as filed in the United States, or granted by the United States and manufacture the product which is manufactured under the same patent in Germany?

Mr. Kresel: One minute again, if your Honor please. That is calling for this witness's conclusion, and it is merely speculative. It all depends upon the ability of the chemist.

The Court: Is not the test really whether the patents make such disclosure as to enable one skilled in the art to produce the result?

Mr. Kresel: Exactly, that depends upon the patents and upon the state of the art here.

The Witness: No, upon the chemist.

Mr. Kresel: In other words, how does it aid the Court to have this witness say that assuming

Q. 91. Can you give the numbers. I asked him, Mr. Kresel, to make out a list of the numbers and save calling them off as it is very difficult for the stenographer, and I will hand him this list.

MR. KRESEL: Yes.

Q. 92. Have you checked over the so-called Badische patents included in the list in the bill, and identified the numbers included in your list, included as tanning patents; have you checked them over?

A. I have checked them over.

Q. 93. Will you hand to the stenographer a list showing the serial numbers of those patents to which you now refer. Just hand him this list.

A. (Witness handing list as follows):

1,421,722,
1,414,045,
1,336,759,
1,289,280,
1,281,494,
1,278,229,
1,254,364,
1,237,405,—$5000 in 1913.
1,216,612,
1,203,069,
1,191,480,
1,107,107,
1,089,797,

THE COURT: Any objection, Mr. Kresel?

MR. KRESEL: None at all.

Q. 94. You include that as part of your answer, as identification of the patents; you can just put that on the record?

A. Yes.

MR. ANDERSON: There is no objection.

Q. 95. Are these so-called tanning patents, patents covering product, as well as process?

A. Yes, as well for new products as processes in

manufacturing them, as for processes for application from the tanning of the products.

Q. 96. How many of these patents were in actual use, commercial use, for manufacture, prior to 1907, do you recall?

MR. KRESEL: Where?

MR. ANDERSON: In Germany.

MR. KRESEL: In Germany?

MR. ANDERSON: Yes.

A. Prior to 1917, I think we used about—we produced about two new products.

Q. 97. Two new products?

A. Two new products, and now there are three or four products which are made.

Q. 98. In 1919, how many were in use in Germany?

A. I think three, three.

MR. KRESEL: The question is—how many patents were in use?

THE WITNESS: That is another question.

Q. 98. How many of those three patents, these patents you have listed?

A. Thirteen products.

Q. 99. Three products manufactured under these tanning patents?

A. Yes, and of course, the use of these products was covered by other patents, so that more than three patents may have been involved.

Q. 100. Yes.

A. Than those for the production, and those for the use as tanning product.

Q. 101. The products that you refer to as manufactured under this patent, were all manufactured under the thirteen patents that you mention?

A. Yes, all of them.

Q. 102. They cover the whole situation as to these three products?

A. Yes.

Q. 103. Were any of these products exported to the United States prior to the time that we went into war?

A. Yes, some of these products were imported before the war, but the export did not amount to much, because the whole field was just in the stage of development, I think the field of invention originated in 1911, or about so, and of course, before the war, it could not be fully developed.

Q. 104. Did your company export any of this product to the United States in 1913, before the World War began?

A. Yes.

MR. KRESEL: Will you identify the product for us, what is the name of it?

Q. 105. State the name of the product?

A. I do not know under which name it is traded here, but the trade name in Germany is Neradol D.

Q. 106. Did your company sell that product in the United States?

A. Yes, we imported it.

Q. 107. How much did you realize and profit from the sale of the product under that patent, or that particular product in the United States in the year 1913?

A. The net profits?

Q. 108. Yes?

A. In the importation of this product into the United States?

Q. 109. Yes.

A. It amounted to 21,478 marks, that is, about five thousand dollars.

Q. 110. When you refer to Marks, you refer to gold marks?

A. Yes, gold marks in 1913.

Q. 111. Was that one of the more valuable products that has been developed under these products?

A. It is a valuable product. As to these properties, on the products we have brought into the sale afterwards, they are much cheaper, and they are sold in much bigger quantities than the first product, owing to the lower price. The properties of this product are excellent.

Q. 112. Dr. Holdermann, assuming for the present that the patents granted or filed in the United States covering these tanning products are for all practical purposes and commercial purposes the same as those filed in Germany, and taking the facts which you have indicated and testified to, as a basis, what would you say was a fair commercial value of those thirteen patents in 1913, to your company?

MR. KRESEL: One minute, please. I object to the question as to form of inquiry. We object to it on the ground that the value in 1913 is immaterial.

MR. ANDERSON: Did I say 1913. I meant to say 1919.

MR. KRESEL: We object to the question further upon the ground that the witness has not been sufficiently qualified to express an opinion upon that question. It is assumed in the question that the basis has been established. As far as I can see, the only basis testified to by the witness was that in 1913, they exported a product, which he has described, from which his company made a profit of five thousand dollars.

MR. ANDERSON: To the United States.

MR. KRESEL: To the United States. Now, I claim that is not a sufficient basis upon which the witness can be permitted to give an estimate of the value of the patents in 1919 and the value in the United States under the conditions which he

has not described. It seems to me it is purely speculative.

THE COURT: I will hear Mr. Anderson.

MR. ANDERSON: Just a word. I had assumed the condition of the patents to be substantially the same, without further proof. I must assume that as a hypothetical question. I will assume, if desired, that the market exists in the United States, but I think the testimony is sufficient for that. If it is an essential fact and is not subsequently proved, of course, the question goes out. Whatever may be the value of this testimony upon the facts as stated is a question for discussion later, but it seems to me that this is one of the facts going to show, an essential fact going to show the value of these patents, tending to show their value; and if it does, why then, of course, we will introduce a great deal of evidence on this subject to fit up with this evidence. But at the present time, in anticipation, we can only take what this witness knows.

THE COURT: As I understand Mr. Kresel's objection is that the basis is so remote that the answer would be without any value and consequently inadmissible.

MR. KRESEL: If I may suggest, your Honor; if the Colonel desires simply the fact, the one fact that this witness can testify to, namely this $5,000 profit that they made in 1913, he now has that; and if he desires to use that as a partial basis for a question as to value to some other witness, he can use it. But as your Honor has expressed it much better than I have, the basis is so remote that any estimate that this witness may place upon the value of these patents would be absolutely valueless.

MR. ANDERSON: Is that not a question of the

value of the evidence rather than its admissibility?

THE COURT: My impression is it is not, Mr. Anderson. It does not furnish us sufficient facts as a basis to enable us to place any value, any official value upon any conclusion that this witness could draw. However, I will overrule the objection on the understanding that we have, that all objections are to be overruled and finally passed upon at a later stage of the case, after we have more fully understood the merits.

MR. ANDERSON: I think, if I may suggest, to get along, while I want Mr. Kresel's objection for the benefit of giving me notice of the objection, if he will just make the objection, stating briefly his grounds, I do not desire to argue it if your Honor is not going to pass upon it now. There is no use of my arguing upon it at this time.

THE COURT: Then, in order to expedite the matter, shall we just have the objections formally stated and then, if that suggests anything to you, you may amend your question or proceed as you deem proper.

MR. ANDERSON: Certainly.

THE COURT: And there will be a formal ruling upon each objection?

MR. ANDERSON: Yes, sir.

Q. 113. Will you answer now the question. What is your estimate of the fair value of these thirteen Tanning patents, the fair market value of these thirteen Tanning patents as of 1919 in the United States?

A. Considering that this is only for one product?

MR. KRESEL: Doctor, just answer the question. You have been arguing enough.

Q. 114. Let me put the question again. You

have testified that there were three products made under these patents?

A. Yes.

Q. 115. One of them was imported in 1913 before the war?

A. Yes, sir, where we made the $5,000.

Q. 116. That there were two other products developed under the patents that were valuable prior to 1919. Now I will ask you one other question. Are those products products of general commercial use in connection with tanning?

A. Yes.

Q. 117. And for the purposes for which this kind of stuff is used?

A. Yes.

MR. KRESEL: May we know what the products are?

Q. 118. All right, you can state the products, What were the products that were so developed under these patents?

A. The trade names, or what is your intention?

MR. KRESEL: I cannot hear you.

THE WITNESS: What is your question? What shall I state?

Q. 119. He wants to know what the products are, the trade names?

A. Neradol Ende and Ordoval, G. & G. G., two brands, not much different. These are the products.

By MR. KRESEL:

Q. 120. Yes, but what are they? Those are just names. What are they, shoe leather or silks?

A. These are chemical condensation products; sulphonic acids, so to say, and products which are covered by these patents.

By Mr. Anderson:

Q. 121. Are they synthetic tanning solutions?

A. Synthetic tanning materials; yes.

Q. 122. Taking the experience that your company had before the war interrupted this export, and your knowledge of the character of these patents, state to the best of your information and belief their fair market value in 1919 at the time they were seized by the Government and transferred to The Chemical Foundation?

Mr. Kresel: I must object to the question as to its form. This witness cannot testify as to his information and belief, if he is testifying as an expert.

Mr. Anderson: I said "to the best of his knowledge."

Mr. Kresel: You said to the best of his information and belief.

Mr. Anderson: I substitute "knowledge" for "information."

The Court: You are asking him now as an expert?

Mr. Anderson: I am, as to what he thinks these patents were commercially worth.

Mr. Kresel: We raise the same question that we did before, and I assume the disposition is as before.

The Court: There will be a formal ruling, overruling the objection.

A. After my knowledge, the market value of these patents at the time of transfer was as a minimum $300,000. I doubt if my company would have sold it for that price.

Mr. Kresel: I move that the latter part of the answer be stricken out. He has given his estimate as to the value.

THE COURT: Any opposition to the motion to strike out?

MR. ANDERSON: No.

THE COURT: The latter portion of the answer may be stricken out.

Q. 123. If your company had been offered $300,000 for these patents in 1919, would you as a patent expert, as you have testified, advise its acceptance?

A. I doubt whether——

MR. KRESEL: One minute, Doctor. I object to that upon the ground that it is a hypothetical question. There is no foundation laid for it and it is immaterial and irrelevant as to what this witness' company might have done. It certainly is no basis for an estimate as to value.

MR. ANDERSON: It is what this witness will advise his own company. He is familiar with the whole business, as to what it would pay or would take for these patents.

THE COURT: I think that the answer called for by that question would be irrelevant and immaterial. I grant the motion to strike it out and you may take your answer under Rule No. 46, if you so desire.

Q. 124. I would be glad if you would answer the question subject to objection. The question was whether or not you as the officer in charge of the patent department of your company would have advised it to accept for these patents a price of $300,000 in 1919?

A. We should have regarded it as the ultimate minimum price and I doubt whether they would have sold it for that price.

Q. 125. Now, Dr. Holdermann, there are various other patents included in the list which you identified

this morning, which you described generally as dye and dye process patents; that is, chemicals used in dyes. Are those patents both product and process patents also?

A. They include most various things, products and process for manufacturing the products, processes for dyeing the manufactured products and auxiliaries for dyeing some intermediates which are used for the reduction of the dye stuffs and related things.

Q. 126. Then they cover both the product and the process for manufacturing the product; is that true?

A. Yes.

Q. 127. Can you state how many of these dye and dye process patents were in use in the United States in 1919?

MR. KRESEL: I submit, your Honor, that this witness, having already testified that he was not in this country prior to 1922, cannot have any knowledge as to how many of these patents were used in the United States.

MR. ANDERSON: Prior to the transfer?

MR. KRESEL: Yes, prior to the transfer.

MR. ANDERSON: He was the patent expert of the company that owned the patents. He ought to know.

MR. KRESEL: There was a state of war between this country and Germany for two years prior to this sale, and this witness certainly cannot have had any information during those two years as to what patents were or were not used.

THE COURT: The ruling on that question, I think, comes under our general plan. The objection is formally overruled.

Q. 127. (Continuing.) Go ahead.

A. I cannot say how many of these patents were in actual use in the United States right prior to 1919, but I can say that 65 of these patents are for prod-

ucts which have been imported by our firm into the United States. Does that answer your question?

Q. 128. Yes. But the exportation by your firm into the United States stopped with the beginning of the war in 1917, did it not?

A. Or before, yes.

Q. 129. I did not catch the number. How many did you say?

A. 65.

Q. 130. Are you exporting any of that product into the United States today, do you recall?

A. Yes, we are.

Q. 131. Could you say whether there was any increase in the use of these products during the period in which you were exporting into the United States prior to the war, from the time the patents were taken out? Those that were in use?

A. That is a general rule, that the use of a dyestuff or of a patented product grows or is subject to an increase during the life of the patent.

MR. KRESEL: That is simply a general rule, your Honor, and I think that ought to go out.

THE COURT: Any objection, Mr. Anderson?

MR. ANDERSON: No.

THE COURT: That may be stricken out. Will you repeat the question, Mr. Stenographer, and let him answer the question?

A. Yes, there was an increase.

Q. 132. As the assistant manager, the chemist in charge of the patent department of your company, have you had occasion to know or to ascertain the commercial value of these various patents which were developed by your company during the period under discussion now, prior to the war?

A. Yes, I had an ample opportunity to get this information. I am often conferring with the heads of the several departments and also, reports are laid

before me, and I got special information about the sales in the United States of the products that we have patented there.

Q. 133. I think you testified this morning that you had charge of applications for patents in the United States?

A. Yes, I have.

Q. 134. I would like for you to say, for what it is worth, what you regard as the fair market value of the patents which relate to dye stuffs and dye processes which you have described, in 1919; patents which were seized belonging to your company and sold to The Chemical Foundation?

MR. KRESEL: Is this question only as to the 65 patents?

MR. ANDERSON: No, it is as to all of the dye process patents.

(Further colloquy off the record.)

MR. KRESEL: I am simply trying to get my own understanding straight here. This witness testified first that there were three Haber patents; then that there were thirteen tanning dye patents. Do I understand that you are now asking him as to the value of all of the other patents?

MR. ANDERSON: Of the patents other than the 58 Haber patents. He has testified to 58 Haber-Bosch patents and to 13 Tanning patents.

MR. KRESEL: And this present question is as to all the other patents?

MR. ANDERSON: As to all the other patents, that is dye stuffs and industry. I covered it that way, because there is no use of going into it in detail.

MR. KRESEL: As long as we understand it. Now, if your Honor please, I object to the question upon the ground that the witness has not testified to anything which can form a sufficient or

proper basis upon which he can give testimony as to the market value of these patents. I have taken note of just what he has said about it. He said that they are both product and process patents. He said that as to 65 of them, the products under those, had been imported into the United States. He said that during the time of the importations, there was an increase in the amount imported. And lastly, he said that he conferred with heads of departments and had reports before him.

I say, your Honor, that that is not a sufficient basis upon which anyone should be permitted to undertake to give testimony as to the value of these patents; and, according to this witness, if there were 450, if you take out 58 and 13, you have almost 400 patents, without the slightest specification of what patents he is referring to, which are valuable and which are more valuable, or which are less valuable. Upon this mere skeleton that he has given, for him to undertake to place a value, it seems to me, would be absolutely worthless to the Court to form any opinion.

MR. ANDERSON: I will just withdraw the question then. I will just take that much longer. I was trying to cut the examination short, but I will go back.

Q. 135. Will you make a list of the patents by issue numbers from the exhibit in the bill, a list of those patents which were in use and under which exportations to the United States were made prior to the war?

A. I can furnish such a list.

Q. 136. How long would it take you to do it now?

A. Half an hour, quarter of an hour, in between.

MR. KRESEL: I trust that Colonel Anderson is not misunderstanding me.

THE COURT: I think he is. Will you state your objection again?

MR. ANDERSON: He said we have not identified the patents. We are attempting to now.

MR. KRESEL: Not at all. That is the reason I asked you to state whether you meant all the other patents. That sufficiently identifies them, in a group.

THE COURT: I think you misunderstood Mr. Kresel entirely.

MR. KRESEL: That sufficiently identifies the group. But my point is that this witness is about to give the value of this large group of patents without undertaking to say now, as to patent 1,000,002, I think it is worth so much; 1,000,003 is not worth as much as that, and for this reason; he has not given any figures at all. He has not even said what their profits were in Germany on these importations under the 65 patents. We have nothing upon which a person can base any opinion.

MR. ANDERSON: You can test that knowledge, if you wish, on cross-examination.

THE COURT: Mr. Kresel's objection is that his appraisement would not be a real appraisement of the value of these patents, because an appraisement must be in detail to be of any value at all.

MR. ANDERSON: If your Honor please, it will appear later in this case that The Chemical Foundation bought these patents for a lump sum of $250,000 and did not appraise any of them. Now they ask us to appraise them.

Q. 137. I will ask you to state, if you can state, what your profits were for the year 1913 from the pat-

ents that you said you exported to the United States under.

MR. KRESEL: That I object to upon the ground that it is immaterial and irrelevant as to what the profits were in 1913. These patents were sold in 1919. Besides, the profits cannot be from a patent. The profits are from manufacturing articles and selling them.

MR. ANDERSON: I think, if your Honor please, that if you manufacture an article and sell it in the United States, and it is covered by a patent process, that the net profits which you derive from the manufacture of that article, is one of the evidences of value in that patent, because you could not manufacture otherwise.

THE COURT: I do not understand that.

MR. ANDERSON: After deducting all the cost of manufacture.

THE COURT: There are so many elements. Is it not the Westinghouse case, Mr. Warfield, which goes into that?

MR. WARFIELD: Yes. If that were an accounting, it would be different, but unfortunately for counsel here, it is very different.

THE COURT: I do not understand, Colonel Anderson, that you can get the profits in that way. I may be mistaken, but that is my opinion.

MR. ANDERSON: I would like for the evidence to go on the record, subject to objection, if your Honor please, and then we will take up the question.

THE COURT: Objection overruled then under our working arrangement.

MR. ANDERSON: I do not want to argue on this question all this afternoon. It may take us a week. You will hear us later.

Q. 138. Go ahead and tell us what your profits were from these particular patents which you exported in 1913, your net profits, after deducting all expenses?

A. To make it clear, I wish to state that this answer simply concerns the United States patents.

Q. 139. Yes.

A. Mr. Kresel just now asked for the value in Germany. I do not think it is of any value. This morning he complains that we are confusing the value in Germany and in the United States, but I think the only issue here is the United States patents' value.

MR. KRESEL: I am glad to see that the witness is now trying the case instead of being just a witness, but I do not think that is called for.

THE COURT: Any objection?

MR. ANDERSON: Not the slightest, it may be stricken out.

THE COURT: Strike it out. Will you read the question?

Q. 140. What we want is what were your profits, if you can state, what they were from manufacture of articles exported in the United States under these particular patents during the year 1913?

A. Those profits?

Q. 141. Yes.

A. They amounted to 1,367,668 marks, gold marks, then.

Q. 142. That was for the year 1913?

A. It was the profits in 1913, from exports into the United States.

MR. ANDERSON: This is all objected to, of course, I understand.

Q. 143. You say the profits in the United States?

A. In the United States.

Q. 144. Did your company manufacture and sell direct to the United States?

A. No, that was a misapprehension, it is profits which our company earned in Germany, from exports into the United States.

Q. 145. That is, net profits, after deducting all expenses of every kind?

A. All expenses and manufacturing costs.

Q. 146. In the particular patents which you have described, that is those other than the synthetic tanning and the nitrogen processes?

A. Yes, the sixty-five patents.

Q. 147. Are there any more than sixty-five patents of that lot, in use at the present time?

A. Yes, there are.

MR. KRESEL: In the United States or in Germany?

MR. ANDERSON: In Germany.

THE WITNESS: No, in the United States.

Q. 148. Well, you can take it the United States. Do you know of your own knowledge in the United States?

A. I think it is better to confine it to the United States. (Laughter.)

Q. 149. All right, but what I want to get at is, if you do not know the thing in the United States, you cannot testify to it. I will prove that from some other source. Now, what I want to get at is the number of those patents in use today, if you know it, do you know in the United States?

A. I know the number of the United States patents which are now being in use in Germany, and the products of which may come over here, or are coming over here.

Q. 150. How many?

MR. KRESEL: That was not the question.

Q. 151. That was the question as far as I could make out, because I told him he could not testify otherwise than in the United States.

MR. KRESEL: I understood the question to be whether he knew how many patents are being used in the United States. If the Colonel wants to re-cast his question, there will be no objection.

Q. 152. No. How many of those patents which were taken out in the United States are now being used for the manufacture of products which might be shipped to the United States from Germany? This witness cannot testify as to what is being done in the United States.

THE COURT: Won't you read that question. Have the question re-read to you, and see whether it expresses your thought.

(Question repeated by the stenographer as recorded.)

MR. KRESEL: Do I understand the question is what United States patents are being used in Germany?

MR. ANDERSON: No. Here is the situation. Certainly not. You cannot use United States patents in Germany, I assume everybody knows that. Here is what I want to get at, Doctor——

MR. KRESEL: I assumed that.

MR. ANDERSON: These patents are taken out first in Germany, and then in the United States?

THE WITNESS: Yes, sir.

Q. 153. Now, you have described all your German patents you have taken out in the United States, a certain number covering dye stuffs and dye processes. You are now engaged in the manufacture of products under those patents in Germany, which could be shipped to the United States?

A. Yes.

Q. 154. How many of those patents are you commercially using at the present time?

A. It is eight additional.

Q. 155. How many in total?

A. It is sixty-five before, it is 211 dye stuff patents and related patents which are now being used.

Q. 156. 65 and 88—you are mistaken?

A. No, it is 153.

Q. 157. 153?

A. Yes.

Q. 158. Your 211 patents included your tanning and nitrogen patents which we are not considering?

A. Nitrogen patents; yes.

Q. 159. Now, I wish to go back to the nitrogen patents for a moment and ask you a question, and I know that it will be objected to, but that does not matter: Assuming that the patents taken out in the United States are substantially the same in terms as the patents taken out in Germany, what would be a fair royalty basis, in your opinion, for the right to use this patent in the United States, in the manufacture of nitrogen products?

MR. KRESEL: Does this refer to the 58 patents?

MR. ANDERSON: The nitrogen patents.

A. The 58 patents.

Q. 160. I mean, what would be a fair royalty basis?

MR. KRESEL: We object to that, if your Honor please, upon the ground that that is immaterial; that the question of what is a fair royalty is not an issue in this case.

MR. ANDERSON: It is one of the elements, and I am going to follow that up with other questions, and I want to lay the basis for another question.

MR. WARFIELD: Based on a legal impossibility.

MR. KRESEL: I assume that counsel is going

to ask additional questions, but that is hardly an answer to the objection.

MR. ANDERSON: I do not desire to argue.

THE COURT: Objection is overruled on the same ground.

A. I think a fair royalty, a very moderate royalty, is about one cent a pound on fixed nitrogen.

Q. 161. A cent a pound on fixed nitrogen?

A. Yes, manufactured under those 58 patents, or part of them.

Q. 162. Yes. Do you refer now to the Haber-Bosch patents?

A. Yes.

Q. 163. Assuming that the patents are the same, in terms substantially as in Germany, and the consumption of nitrogen in the United States in 1919, exclusive of production from coke ovens, was 100,000 tons, and that the average life of these patents were ten years——

MR. KRESEL: Is there a question?

MR. ANDERSON: No——

Q. 163. (continued.) ——what would you then say would be the royalty value of those patents?

MR. KRESEL: That calls, if your Honor please, assuming that it is material and relevant, it calls simply for a mathematical calculation, which, of course, the Court would be still able to make.

MR. ANDERSON: I only want to get the question on the record. I could not make it, so I would like to have it.

MR. KRESEL: I am afraid that this witness is not better qualified to make that calculation than anybody. It is not a subject of expert testimony. We object to it upon that ground.

THE COURT: Objection sustained.

MR. ANDERSON: I do not think there is anything else that I will ask——

Q. 164. Then, I will ask this question: Assuming that the patents are substantially the same, and that the consumption of nitrogen in the United States in 1919, for chemical purposes, exclusive of the production from coke ovens, was 100,000 tons, and the average life of the patent was ten years, what would be the value of the patents?

MR. KRESEL: I object to that on the ground that this witness has already given the value of these patents at seventeen million dollars. It is not the intention of the Government now to change that?

MR. ANDERSON: Not at all. If your Honor please, the evidence was objected to because we have not laid proper foundation. We cannot lay a proper foundation at this stage of this case, by proving these assumed facts, because this witness cannot testify as to the consumption of nitrogen in the United States, except from records. We have to prove that later by the evidence. Now, I would like to have his judgment, as an expert on that subject, based upon these assumptions, of course, if these assumptions are not testified to later and not proved, the evidence goes out.

THE COURT: The difficulty, I understand from Mr. Kresel, in ruling on Mr. Kresel's objections, is this, and if I properly understand the questions which you now ask, were in the assumption that you must make, that they will not furnish proper foundation for the testimony of this witness. If I understand this objection, it is that this man, having no familiarity, and not being in America, and not being familiar with American

markets for these patents, and being only distantly familiar with the sale of a certain amount of material in America, is not qualified as an expert to place values, American values, upon the patents which were sold. Does that indicate your idea?

MR. KRESEL: Yes, your Honor has summarized it excellently. I could not have expressed it as well.

THE COURT: Then, if that is true, then the assumption of fact will not supply the basis, the objection going to the incapacity of the witness to testify with respect to the matters asked on. The objection therefore is overruled on the same basis.

MR. ANDERSON: I do not care to say anything. I was going to reply on that subject, but I will not reply.

Q. 165. Will you answer that question on the basis of that 100,000 tons of nitrogen produced a year, what would be the value of these patents?

A. On the basis of 100,000 tons, it would be about twenty millions of tons—of dollars—twenty millions of dollars, of course.

By MR. KRESEL:

Q. 166. Twenty million tons or dollars?

A. Dollars, well, it is counted in dollars.

By MR. ANDERSON:

Q. 167. Based on one hundred thousand tons, outside of coke production. Now, Dr. Holdermann, you testified that you had charge of procuring these patents in the United States. Can you state what is the cost to your company of securing the patents in the United States?

MR. KRESEL: We object to that upon the ground that that is immaterial and irrelevant.

This really cannot show the value of the patents as to what it cost to get them.

MR. ANDERSON: There is an allegation in the bill in this case, if your Honor please, which is to the effect that the price paid for these patents was less than the actual cost fees of getting them. I do not care to go into an argument as to the relevancy of that, because you cannot develop it until you develop this entire case; but at the present time I would like for this witness to testify to that. If it is not relevant, it can be stricken out at the proper time. I do not want to argue at all.

A. You mean the legal fees that are paid for taking out the patents?

MR. ANDERSON: The legal fees; what he has paid, the attorneys fees, and everything else, what every patent cost you, for the United States. If it is immaterial, it can be stricken out, but unless it is necessary, I do not want to go into a lengthy argument on this question unless I have to.

MR. KRESEL: Does this refer to every one of the five hundred patents?

MR. ANDERSON: Every one of the five hundred patents.

MR. KRESEL: I have taken particular objection. I assume your Honor will dispose of it in the same way as the others.

THE COURT: Objection overruled.

A. The legal fees are $35 for every patent, and foreigners have to employ a patent attorney, and he will charge $50 a patent, and there may be additional costs for appeal and interference cases in more difficult matters.

Q. 168. The minimum charge to your company itself for every patent was $85, then?

A. Yes, legal fees included.

Q. 169. And extra charges they have for special service?

A. Yes, sir.

MR. ANDERSON: That is all.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 170. Now, Dr. Holdermann, if you will give me your attention, I would like to ask you a few questions?

A. Yes, sir.

THE COURT: Suspend just for a moment.

(After a short recess.)

XQ. 171. Doctor, did you give us your age this morning?

A. Yes.

XQ. 172. How old are you—I have forgotten.

A. Forty.

XQ. 173. And you did say that you graduated in 1904, I think, was it not?

A. Yes.

(No Q. 174.)

XQ. 175. And then you joined the staff of the Badische Company in 1906?

A. Yes, that is it.

XQ. 176. Now, has your work been of a technical nature or has it been administrative mostly—you understand what I say?

A. Yes, more administrating.

XQ. 177. More administrative?

A. Yes.

XQ. 178. That is, you are by profession a chemist, but since you have been with the Badische Com-

pany you have been one of the executives of the company?

A. Yes.

XQ. 179. What title do you hold with the company; what is your title?

A. First, I was a chemist, and then I became an assistant manager, as a prokurist in Germany.

XQ. 180. A prokurist. Now, what is a prokurist, you say; an assistant manager, what particular power as a prokurist have you?

A. He has the power of signing the company, together with another assistant manager or a director.

XQ. 181. That is, you are authorized in conjunction with another official of the company to sign the company's name to contracts and documents?

A. Yes.

XQ. 182. And you have had that power ever since you became assistant manager?

A. Yes, that is inherent to that——

XQ. 183. To that office?

A. To that office, that is the title.

XQ. 184. And how long have you been assistant manager?

A. Since the fall of 1920.

XQ. 185. The fall of 1920. Now, prior to 1920, did you have any office in the company, or were you just an employee?

A. I was just an employee in the patent department.

XQ. 186. In what department?

A. In the patent department.

XQ. 187. Well, have you been in the patent department ever since 1906?

A. Yes, with a few exceptions in the war, where I had occupation in the ammonia laboratory, practically.

XQ. 188. When was that, during the war, did you say?

A. During the war I did experimental work.

XQ. 189. You did not serve in the army?

A. No.

XQ. 190. Were you under military rule at all while you were doing this experimental work?

A. Of a sort, yes.

XQ. 191. A sort of military rule?

A. Yes.

XQ. 192. Indeed, many men while not actually with the armies in the field, were working for the Fatherland in ways which you were working?

A. Yes, that is it.

XQ. 193. And as a result of that service, did you get any rank?

A. No.

XQ. 194. Any army rank?

A. No.

XQ. 195. None at all?

A. No.

XQ. 196. Now, how long a time did you do this military or war work, during the entire period of the war?

A. Yes.

XQ. 197. What experiments that you were carrying out, were they carried out in the factories of the Badische Company?

A. Yes.

XQ. 198. In—what is the name—Ludwigshafen?

A. Ludwigshafen and Oppau, which is near Ludwigshafen.

XQ. 199. Ludwigshafen and Oppau are only two of the factories of your company; there is another one at Mersenberg, is not there?

A. There is a third one.

XQ. 200. Yes?

A. Mersenberg.

XQ. 201. Are those the only three?

A. Yes.

XQ. 202. Now, the Oppau factory was built prior to the war, or during the war?

A. No, it was built prior to the war.

XQ. 203. How long?

A. It was started about 1911 or 1912.

XQ. 204. 1911?

A. Or 1912; I am not sure about.

XQ. 205. Well, during the war, was it enlarged?

A. It was enlarged.

XQ. 206. Considerably enlarged?

A. Yes.

XQ. 207. For the purpose of doing war work?

A. Yes.

XQ. 208. And this Mersenberg plant, was that built during the war?

A. Yes, it was started in 1916—in the fall of 1916.

XQ. 209. And was it completed before the war ended?

A. Yes, in a very short time.

XQ. 210. And that likewise was devoted to war work?

A. War and fertilizers for the agriculture.

XQ. 211. Well then, that was war work to an extent, was it not?

A. Yes, in a broad sense.

XQ. 212. It was all done under supervision?

A. Yes.

XQ. 213. To help along the armies in the field?

A. Yes.

XQ. 214. Now, I do not mean to pry into your private affairs, any more than is absolutely necessary, but I would like to know what arrangement for compensation you have, as a procurateur of the Badische Company?

A. I get a monthly salary, and an additional sum at the end of the year, but it does not depend on any production or so; it is simply at the discretion of the managing directorate.

XQ. 215. Yes. That is, you get a stipulated sum, and in addition to that, you get a bonus, so to speak?

A. Yes.

XQ. 216. Now, the first time that you came here was in 1922?

A. Yes.

XQ. 217. That was your first trip to the United States?

A. Yes.

XQ. 218. And what month in 1922, did you come here?

A. It was June of 1922.

XQ. 219. And have you been here ever since?

A. No. I left after a few weeks.

XQ. 220. You stayed here a few weeks and went back to Germany?

A. Yes.

XQ. 221. And when did you return?

A. In the middle of April, this year.

XQ. 222. And you have been here since then?

A. Since that date.

XQ. 223. And you are about to depart again for Germany?

A. Yes.

XQ. 224. Now, when you came here in June, 1922, did you come here on the business of your company, the Badische Company?

A. Yes.

XQ. 225. Were there others that came with you?

A. Yes.

XQ. 226. Was there a Dr. Oppenheim that came with you?

A. Yes, but he was not a member of our firm.

XQ. 227. I am coming to that. And who else came with you?

A. A lawyer called Wagner.

XQ. 228. And who else?

A. What?

XQ. 229. Did you say there was somebody else?

A. I said Mr. Oppenheim.

XQ. 230. That is, there were three of you?

MR. ANDERSON: I do not want to object to this witness because we want the facts to come out, whatever they are; but I cannot see the relevancy of all of this inquiry.

MR. KRESEL: I am perfectly willing to state for the record, and for the information of counsel, that we deem this to be relevant. We desire to show the interest of this witness. We desire to show his connection with this litigation. It is our understanding of the rule that a person who undertakes to qualify as an expert, must be without interest in the outcome of the litigation. We propose to show that this witness has an interest, and that these questions are directed toward developing that fact.

MR. ANDERSON: But the question of who should have come over here with him, if you want to investigate his attitude—but we are not engaged in the general trial of the question of who is interested in this litigation. The Government of the United States is the only party now, and this gentleman is an officer of the Badische Company, and it is stated here that the Badische Company claims those patents, or was the owner; to those facts I have no objection in the world, and if they can show that he had any personal interest, I have no objection, but this inquiry generally into who came over here, to the United

States, certainly cannot have anything to do with this litigation.

THE COURT: I did not see the relevancy myself at the time, Mr. Kresel. Do you care to state that definitely?

MR. KRESEL: Yes, your Honor. I have the information that I have solicited. I was going on to another point.

MR. ANDERSON: I make a motion to strike out all the evidence as to who came over here, excepting the witness himself.

MR. KRESEL: No. I am perfectly willing to state the connection between the witness and the other two men. Our information is that they were a committee who were designated — they were a committee who were designated by those German dye interests to come here and seek to obtain possession of these patents, that they are——

THE WITNESS: That is wrong.

MR. KRESEL: Mr. Witness, if you will just deal with this, I think we will get along very well. Do not address the Court without direction. Of course, I have made the disclosure now. I do not know how the witness is going to handle the proposition, but I have no objection to the statement. I think your Honor will see that that is relevant——

THE COURT: The objection will be overruled on the same basis as before.

XQ. 231. Now you and these other two men represented not only the Badische Company, but some other chemical companies in Germany, did not they?

MR. ANDERSON: I object on the ground that anybody that this witness represented—I have no objection in the world to getting the interests of this witness in this instance, but I do object to his asking whether they represent any other company.

THE COURT: I am wondering this, Colonel Anderson, and I am stating this so that you can have an opportunity of helping me, that whether the interest of this man may not be two-fold; whether he might not have a personal interest in the Badische Company, and he might not be one of a number of delegates representing, for instance, the dye interests of Germany. Now then, if I correctly understand Mr. Kresel, this witness has already disclosed, even in his direct testimony, his direct interest in the Badische Company; but as I understand Mr. Kresel further, there has not been as yet a full disclosure what interest that was delegated to him by the German interests; is that so?

MR. KRESEL: That is correct. That is entirely so.

MR. ANDERSON: You mean a year ago. He is here now in that capacity.

THE COURT: No. That is what I presume. I am not ruling on anything you understand, but I presume that the questions which are being asked by Mr. Kresel are to be followed up, and as a means of getting at the full interest of this man in this litigation at any time. Am I correct, Mr. Kresel?

MR. KRESEL: Yes, your Honor.

MR. ANDERSON: I will just note an objection.

THE COURT: I will make merely a formal ruling instead of an absolute ruling. The objection is overruled on the same basis as understood at the beginning of this testimony.

XQ. 232. Doctor, you heard Colonel Anderson state just now that you were here now in your capacity as representing the Badische Company, whose interests in these patents you represent?

A. Yes.

XQ. 233. You know, don't you, that your company has brought a suit based upon these very patents, and that that suit is pending in this Court, and that in that suit, your company is the plaintiff, and The Chemical Foundation is the defendant?

A. Yes. It does not have relation whatever to the Government suit. It is quite another thing.

XQ. 234. Now, you see you have not answered my question; you are not working with me. I am asking you whether——

A. I answered yes.

XQ. 235. Well now, if you will just say yes and stop, we will get along. Now, which one of these three men was the lawyer, Oppenheim?

A. Oppenheim was a lawyer and Wagner was a lawyer.

XQ. 236. Which company did Wagner belong to?

A. The Badische Company.

XQ. 237. And which did Oppenheim belong to?

A. The Achefa a/c Aniline Fabriken, Berlin.

XQ. 238. And whatever your purpose was, and I am coming to that in a minute, three of you came here for the same purpose, did not you?

A. Yes.

XQ. 239. All right. Now, when you came here, you were in New York, were you not?

A. Yes, I was in New York.

XQ. 240. And did you have a meeting with any lawyers?

A. Yes, I did.

XQ. 241. Yes, and will you state the name of the lawyers?

A. I do not see any objection. It was in all the newspapers. It was the firm of Gordon, Battle & Vandiver.

Mr. Anderson: I would like to ask again what possible bearing this may have between this

suit, and the Government of the United States and The Chemical Foundation. It is not a matter concerning this suit in the slightest whether this gentleman employed lawyers or did anything else to conduct suits for the Badische Company. If it is a question of disclosing an interest, that interest is disclosed, and I did not say what Mr. Kresel says—I say I do not think I did—but in any event there has not been any question as to this gentleman being was an officer of the Badische Company. Now he was put on the stand purely to testify on the question of value. If these gentlemen want to make him their own witness, they can do it at their own risk, but it is purely immaterial to any possible interest in this case.

Mr. Kresel: What I am trying to develop, your Honor, has a direct bearing and direct connection between the mission of these gentlemen and the other two mentioned when they came here last year to the United States, and the present suit which your Honor has before you.

The Court: Have you finished?

Mr. Kresel: Yes, your Honor.

Mr. Anderson: There is no such connection. It is the first I ever heard of this man coming to the United States last year, and I drew this bill. There is no connection, but suppose he did, the sole question here is whether this is a valid transfer of these patents or not. It does not make any difference who brought the suit. The Government of the United States brought the suit under the direction of the President of the United States. The bill shows that.

The Court: Does not that jump one point with respect to this man's interest?

Now, unless the cross-examination now being developed is intended to show the full measure of

the witness's interest in this litigation, I do not see its relevancy myself. Now then, if, however, this cross-examination is tending to link this witness's interest in this case up, we will say, to his interest in some other case, then, would it not have a material bearing upon the weight to be given this witness's testimony, even though the connection between this suit and other suits is wholly unknown to you, because we are not developing here, as I understand the trend of the cross-examination, whether this suit was properly or improperly brought; but if I understand it, Mr. Kresel is trying to develop the full measure of this witness's interests, and the steps that he has taken looking to this interest, in order that his testimony in this suit may be properly weighed. I may be wholly wrong.

MR. KRESEL: No, your Honor is entirely right and I thought I had made it plain when I answered the Colonel's last objection.

MR. ANDERSON: I would say that even developing that, could have, in my humble judgment, to overcome the objection, nothing to do with the situation. His interest in the subject matter of this suit would have a bearing. In any event, I do not want to argue the question. I will merely make the objection and submit it.

THE COURT: The same formal ruling then, Colonel.

MR. ANDERSON: Yes; I understand all the rulings are formal.

By MR. KRESEL:

XQ. 242. Doctor, I ask you whether you were not aware of the bringing of a suit by your company against The Chemical Foundation Company, and also the DuPont Company, and the United States Treas-

urer, which is based upon the very patents as to which you testified today?

A. We have not brought any suit against The Chemical Foundation.

XQ. 243. Did you bring a suit against the Du-Pont Company and Frank White as Treasurer of the United States, in this Court right here?

A. Yes, we did.

XQ. 244. And you signed the complaint in that suit, didn't you?

A. Yes.

XQ. 245. And in that suit, you on behalf of your company are asserting rights to these very patents about which you testified today, are you not?

A. These suits are concerning license fees under these patents.

XQ. 246. Under these very patents?

A. Under these very patents.

XQ. 247. And down in New York, you on behalf of your company brought another suit against The National Aniline & Chemical Company and Frank White as Treasurer of the United States in which suit also you are asserting rights under these very patents about which you testified today; is that not so?

A. Yes, we brought a number of such suits to recover license fees under our patents.

By THE COURT:

Q. 248. Can you answer the question yes or no?

A. Yes.

By MR. KRESEL:

XQ. 249. Of these very patents?

A. Yes.

XQ. 250. And in those suits you claimed to be the owner of these very patents, didn't you?

A. Yes.

XQ. 251. I mean, your company?

A. Yes.

XQ. 252. And as you sit there, you claim now, do you not, that your company is the owner of these very patents, do you not?

A. Yes.

XQ. 253. And there is no doubt about it, and I do not mean to criticise you at all, that you are doing everything that you can legitimately do to get those patents back for your company, are you not?

A. Yes.

XQ. 254. Now to return to our visit to New York. You stated that you and Mr. Oppenheimer and Mr. Wagner——

A. Mr. Oppenheim, please.

XQ. 254. (continued) that you and Mr. Oppenheim and Mr. Wagner had an interview in the office of O'Gorman, Battle & Vardiver, is that right?

A. Yes.

XQ. 255. At that meeting—I am not asking you to tell me what was said—was the question concerning these very patents discussed?

A. Yes.

XQ. 256. And after that meeting, didn't you and your two associates go to Washington and have an interview with someone in the Department of Justice?

A. No, I was not there.

XQ. 257. You were not there personally?

A. No.

MR. ANDERSON: I object to that, if your Honor please. If he was not there, he cannot testify to what took place.

MR. KRESEL: Just let me finish the question.

THE COURT: And do not answer until Colonel Anderson has an opportunity to make his objection.

XQ. 258. Don't you know that your associates, Mr. Oppenheim and Mr. Wagner did, subsequent to

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that meeting in Mr. Vandiver's office, go to the Department of Justice in Washington and there had an interview with someone; don't you know that?

A. I don't know how it concerns the value of the patents here.

THE COURT: Colonel, shall you or shall I explain to this witness what his function is while on the stand?

MR. ANDERSON: I think your Honor should do it.

THE COURT: I think it will come with better grace from you.

MR. ANDERSON: I state to Dr. Holdermann that his sole province is to answer the question that is asked by counsel. If you can answer yes or no, answer yes or no. If you cannot answer yes or no, then make as short an answer as you can, that is fair and accurate, to the question. If the question is in any way illegal, I might say that is my duty.

THE COURT: Outside of a pure question of personal privilege which he is not likely to be led into.

MR. ANDERSON: Of course, your Honor will understand that the witness is entirely unfamiliar with the procedure of the Courts in the United States and I tried to explain that to him last night.

THE COURT: Upon that assumption, I asked you to say that to him rather than myself, because he might take that from me as a criticism.

MR. ANDERSON: I explained to him last night our procedure, but of course it is very difficult for him.

I want to note an objection as to what took place in Washington, all questions subsequent to

the statement where he said he did not go to Washington.

THE COURT: I think there is no answer to that question. Will you repeat the question?

THE WITNESS: Just a moment. Unless Colonel Anderson objects, I have to answer?

THE COURT: You have to answer.

XQ. 259. Now Doctor, don't you know that after that interview in New York in Mr. Vandiver's office, your associates, Mr. Oppenheim and Mr. Wagner, did go to Washington and had an interview with a representative of the Department of Justice?

A. At least one of them.

MR. ANDERSON: One moment. The witness has already testified that he did not go to Washington and did not know. Therefore he cannot know, except from hearsay, what took place and I therefore move to strike it out, or rather I object to the question and any answer thereto.

MR. KRESEL: Upon cross-examination, your Honor, I am entitled, if I want, to even this man's hearsay. As Colonel Anderson has pointed out, that may not bind him, the hearsay may not, and yet it may be very important to us in our case.

MR. ANDERSON: In the first place, I wish to reply to Mr. Kresel that this is not cross-examination. There was nothing in the world that related to it in the original examination. It is a pure inquiry of his own, and therefore not cross-examination in the true sense of the word.

MR. KRESEL: It seems to me, your Honor, that the Government ought not to try to stop us to develop fully this man's interest in the litigation.

MR. ANDERSON: If your Honor please, we have no objection. I want to state now, and I am going to state again when the trial is resumed, the

Government wants all the facts in connection with this matter brought out. But they want it brought out by witnesses who know something about it and not mere hearsay.

THE COURT: You may renew the motion at a subsequent period, if you want. Your motion was to strike out?

MR. ANDERSON: Yes, sir.

THE COURT: It is denied, the same as the objections are overruled.

MR. ANDERSON: Yes, subject to raising it again.

XQ. 260. You knew before this one of the three of this commission went to Washington, that he was going to Washington; you agreed with him on that, did you not?

A. I knew, but I did not agree. He did not ask me for my agreement.

XQ. 261. You knew he was going?

A. Yes.

XQ. 262. And you knew that he was going to the Department of Justice with reference to these very patents as to which you testified today?

A. No, I did not know.

XQ. 263. Well, he went there with reference to patents, did he not?

A. I do not know.

MR. ANDERSON: To each of these questions I would like to note an objection, if the Court please.

XQ. 264. You three gentlemen, you have already told us, came here in connection with the patents that were seized by the Alien Property Custodian, did you not?

A. Yes, chiefly for that.

XQ. 265. And do you say now, Doctor, that you really do not know that this one of the three gentlemen

had an interview with the Department of Justice about the patents that were sold by the Alien Property Custodian?

A. No, I do not know. They may have discussed other things. They may have discussed the German claims in general.

XQ. 266. Well, they may have, of course. I do not want to speculate with you. But your main purpose in coming here was with reference to these patents that were seized by the Alien Property Custodian, was it not?

A. Yes, that was.

XQ. 267. And was it not shortly after the visit of this one of your commission to the Department of Justice that this suit which we are now trying was instituted?

MR. ANDERSON: If your Honor please, he cannot testify that he knew about anything when he was not in Washington himself. The question of when this suit was instituted is a matter of record in this suit.

MR. KRESEL: I am not asking for the exact date. Your Honor sees the relation between the questions.

MR. ANDERSON: We want to have a showdown right now. If these gentlemen want to impugn the motives of the Government in this case, let them say so.

THE COURT: I think you are acting entirely on inference.

MR. KRESEL: Will your Honor permit me to answer the question, because I think it calls for an answer from me?

THE COURT: I should be very glad to have you do so.

MR. KRESEL: We do not impugn the motives of the Government. We impugn the motives of the

people whom this gentleman represents. We want to show what his interest in this litigation is. We make no reflection upon you gentlemen who represent the Government or the Department of Justice in this matter. I think that answers the question.

THE COURT: That was my understanding of Mr. Kresel's attitude.

MR. ANDERSON: Of course, with that statement, I wish to object to anything in connection with what took place in Washington on the ground that this witness was not there, as he testified he did not go there and knew nothing about it.

THE COURT: Colonel, I was wondering this, if you will be good enough to help me one step further—you have been very patient with me—as to whether this witness' knowledge of steps which were taken with respect to these matters, whatever that step may have been, that is, as to whether when his colleague went to Washington, this man did not know that he went to Washington for a definite purpose or any specific purpose with respect to the patents in suit—all of the steps which have been taken actively by the witness or are with his knowledge and consent taken by other persons, seem to me of moment. Whatever my ultimate view may be, it seems to me at the moment to have some bearing on the interest of the witness and bears, on cross-examination, on the weight which should be given to his testimony.

MR. ANDERSON: While I understand at this time the question which your Honor has suggested, I differ from your Honor's view. However, I do not want to argue it, because I merely want to reserve the point, and at a later time this whole question will come up.

THE COURT: I am indulging in what will be

too long a discussion until we get to understand where we each are; and after a while we will begin to make formal rulings. But until we find out where we are severally, I thought possibly there was some advantage in discussing the matter, even if it takes some more time.

MR. ANDERSON: I wish to say, if your Honor please, I do not want to object to any question that does not seem to me to require objection.

MR. KRESEL: I will be through on this line in a very few questions.

THE COURT: The same formal ruling.

XQ. 268. Will you answer, please?

A. I am a witness from what results from the newspapers and from the records. I am not a witness to that.

By THE COURT:

Q. 269. If you know, you must answer. If you do not know, say so.

A. I don't remember exactly when the suit was brought. Can you tell me the date when the suit was brought?

By MR. KRESEL:

XQ. 270. Yes, I will be glad to tell you. Listen, Doctor. This bill, this suit, was filed on the 8th of September, 1922. You know, of course, that before the suit was brought, the President wrote a letter with reference to this matter to the Alien Property Custodian. You know that, do you not?

A. Yes, I know that.

XQ. 271. Was not that letter from the President to the Alien Property Custodian written after your confrere had an interview with the Department of Justice? You know that?

A. It was after or before. It was about that date.

XQ. 272. Well, I will take your answer. Now, the Badische Aniline & Soda Fabrik—that is the full name of your company, is it not?

A. Yes.

XQ. 273. And it manufactures dyes, intermediates, pharmaceuticals?

A. No pharmaceuticals.

XQ. 274. No pharmaceuticals?

A. No pharmaceuticals.

XQ. 275. What else does it do besides manufacturing dyes and intermediates for dyes?

A. Acids, sulphuric acid, chrome alum and ammonia; nitrates; fertilizers.

XQ. 276. And it does a very large business, does it not?

A. Yes.

XQ. 277. Its capital is how many million marks?

A. It is now 880,000,000.

XQ. 278. 880,000,000 gold marks?

A. No; paper marks.

XQ. 279. That is unfortunate. In 1919, what was its capitalization?

A. I cannot tell that from memory. It may have been 90,000,000 of marks.

XQ. 280. Was it not 430,000,000?

A. I think that was after 1919, when it was increased.

XQ. 281. To 430,000,000?

A. No, I am quite sure about it. This was two years ago when it was 430.

XQ. 282. Two years ago?

A. Two years ago, yes.

XQ. 283. 1921, then?

A. 1921, yes; about so.

XQ. 284. And it employs a great many employees, does it not?

A. Yes.

XQ. 285. Just to give the Court an idea of the extent of your works, it employs some 30,000 laborers, does it not?

A. Yes.

XQ. 286. About how many chemists does it employ?

A. About 300 graduate chemists.

XQ. 287. And how many engineers are there employed?

A. About 200.

XQ. 288. And then in addition there is the administrative force; that is about 2,500?

A. About so, yes.

XQ. 289. And your concern has been in business since 1865, has it not?

A. Yes.

XQ. 290. Yours is not the only large chemical concern in Germany, is it?

A. No.

XQ. 291. What is the next largest to yours?

A. Farbenfabriken, vorm. Friedr. Bayer & Company and Farbwerke vorm. Meister Lucius & Bruning in Hoechst am Main.

XQ. 292. In order that we may not get involved in long German names, we will call one the "Bayer Company" and the other the "Hoechst Company"?

A. Yes.

MR. ANDERSON: I do not like to object, your Honor. I do not think it has any possible bearing upon this suit. But I do object because it certainly has no bearing upon the original examination, and on the further ground that it is utterly immaterial as to how many companies there are in Germany and what their business is. If we were going into an investigation of the entire dye stuffs and chemical industry of Germany, then this might be relevant evidence. Otherwise it cer-

tainly is not, and there is nothing in the pleadings in this case to call for any such examination as this, that I know of. That is why I object.

MR. KRESEL: As far as this question being in the pleadings is concerned, Colonel Anderson could not have overlooked our defense wherein we plead just that, namely, the hold which the German chemical industry had upon the United States market. But further than that, the basis upon which I am introducing this evidence directly bears upon the witness' direct testimony, namely, as to the value of these patents, the value of these patents, as he testified this morning, to his own company. Now, that value can be judged only in the light of the situation in Germany, the chemical situation in Germany, what it was, how many were in the field, what they controlled. Your Honor can well see that the value of a patent to a well organized, tremendously rich organization is one thing, and the value of a patent in the United States, where there is no chemical industry to speak of, is an entirely different thing; and I want to develop the situation in Germany as to which this witness has testified on his direct.

THE COURT: Objection overruled, under our working arrangement.

XQ. 293. Now, then, the Bayer Company and the Hoechst Company, without going into much detail, are about as large concerns as your company, are they not, and are engaged in the same line of business?

A. Yes.

XQ. 294. Those three companies were in a cartel, were they not, prior to 1904?

A. No, that is wrong.

XQ. 295. When did they go into a cartel?

A. During the war, about 1916.

XQ. 296. The capital of each of these other two,

namely, the Bayer and the Hoechst, was about equal to that of the Badische Company?

A. Yes.

MR. ANDERSON: I do not want to interrupt counsel. Therefore I would like to note on the record that this entire examination is subject to the objection which I have already made, if I may do so without interrupting to object to each question.

MR. KRESEL: That is all right.

MR. ANDERSON: And the same ruling and exception in each case; and also, I want to give notice on the record that counsel takes the witness as his own witness on this examination.

MR. KRESEL: As to that, of course, the Court will rule at the proper time.

MR. ANDERSON: Yes, but I have to give proper notice.

MR. KRESEL: That is all right. The notice is duly received. Perhaps that is for the Court to say.

THE COURT: The suggestion of Colonel Anderson is satisfactory to counsel?

MR. KRESEL: Yes, your Honor, so far as not interrupting the questions.

XQ. 297. Prior to 1916 there was a cartel in which there were the Badische Company, the Bayer, and a concern called the Berlin, were there not?

A. Yes.

XQ. 298. The full name of the Berlin concern was what? What was the full name of that?

A. I am not concerned with that business. I only know it from hearsay. I think it was Interessen Gemeinschaft.

XQ. 299. You are now giving me the name of the cartel. I am trying to get you to give me the name of

the Berlin concern. Was not the name of it the Actien Gesellschaft fur Anilin Fabrikation?

A. Of Berlin.

XQ. 300. The name of the cartel was the Interessen Gemeinschaft?

A. Yes.

XQ. 301. Translated into Good United States, that means what?

A. Community of interests.

XQ. 302. Community of interests is perfect English. Now, that cartel lasted, you say, until 1916, is that right?

A. Yes, sir.

XQ. 303. Side by side of that, there was another cartel, was there not, in which there were the Hoechst, Griesheim, Cacella and Kalle?

A. I don't think you are right.

XQ. 304. We will omit Griesheim?

A. I don't know whether it is correctly designated as a cartel. As I told you, I am not a witness for that. I am not such an organizer for the firms.

XQ. 305. I know, but Doctor you know I am asking you about things right in your home surroundings. You could not have been connected with the Badische Company for so many years without knowing that there was a cartel. You have already told us that.

A. Yes.

XQ. 306. But don't you know about the other cartel?

A. From hearsay; nothing else.

XQ. 307. Well, of course, that is your best knowledge, your best information?

A. This morning you rejected this hearsay as knowledge.

XQ. 308. In 1916 those two cartels came together and formed the present Interessen Gemeinschaft, did they not?

A. Without admitting that there were two cartels. I do not know whether it is a correct expression.

XQ. 309. Well, if that is not correct, this is correct certainly that the cartel of which the Badische was a member took in the others; that is right, is it not?

A. No, that is not right. They did not take in the others. They all combined on the same line.

XQ. 310. All right, they all combined. I will take that. So that today there is a combination of the following chemical concerns in Germany, namely——

A. Firms.

XQ. 311. Namely, the Badische Company, Bayer & Company, The Berlin, Hoechst, Casella, Weiler-ter-Meer, Kalle & Company, and the Chemische Fabrik Griesheim?

A. Yes.

MR. ANDERSON: In addition to my objection already made, I wish to object to that evidence on the ground that if there is any such existing organization, the written agreement between the companies is the best evidence and must be produced. I know nothing about it, and therefore I cannot examine him.

THE COURT: I think this is proper on cross-examination.

MR. ANDERSON: We contend this is not cross-examination. We contend he has made this man his own witness. I do not want to argue, but just to make the point.

THE COURT: Objection overruled.

XQ. 312. And that has been the situation since 1916?

A. Yes.

XQ. 313. One more question on that, Doctor. In 1920, was there not a resolution passed at a general

meeting of all the firms in this cartel, whereby the life of the arrangement was extended until 1999?

A. I do not know.

MR. ANDERSON: I call for the production of the resolution. I object, your Honor.

MR. KRESEL: The answer is already in and the witness says that he does not know. May I go on to the next question then?

THE COURT: I shall assume, Mr. Kresel, that the answer was interposed rather quickly and before Mr. Anderson had an opportunity to make his objection.

MR. KRESEL: Then let us strike it out.

THE COURT: I assume that his objection stands as a motion to strike out. Have you anything to say?

MR. KRESEL: I will consent, your Honor, that the answer be stricken out.

MR. ANDERSON: The whole thing should go out.

THE COURT: You withdraw the question?

MR. KRESEL: I withdraw the question.

XQ. 314. For how long a time, as far as you know, is this combination which you have described, to last?

MR. ANDERSON: I object on the ground that the resolution, if any exists, or the written document, is the best evidence; and it is not cross-examination.

MR. KRESEL: I think if this witness knows, he is competent to testify to it.

THE COURT: Let me see whether there is still a divergence between the views of counsel. Is it your position, Mr. Kresel, that you have made this witness your witness or that you have him under cross-examination?

MR. KRESEL: I consider, your Honor, that I

have so far proceeded in a strictly proper cross-examination.

THE COURT: I wanted your view. The objection, then, is overruled.

A. I am not an expert for the organization of our firms, as I told you. I cannot answer it properly. I am not an expert for that.

XQ. 315. Well, answer it the best way you can.

A. I am not sure. I cannot answer what I am not sure of.

XQ. 316. It is not, Doctor, that you do not want to give us the information, is it?

A. No, I am not sure about it.

XQ. 317. Will you not tell us; this is a combination of the largest chemical concerns in Germany, is it not?

A. A combination or an understanding or how you will call it.

XQ. 318. Well, we will call it an understanding. I will use your language.

A. You will call it so, but I don't know whether it is correct. I will not stick to the word.

XQ. 319. What is that?

A. You will call it a combination. I don't know whether it is correct. It is an understanding.

XQ. 320. Well, I am using your language, Doctor. You called it a combination. Do you want to change that?

A. No; community of interests.

XQ. 321. Subsequently you said it was a combination. Do you want to change that?

A. I don't want to stick to the word. I am not so very familiar with the language, as I told you.

XQ. 322. Very well. We will take your present language, then, an "understanding." Is that what you call it?

A. Yes.

XQ. 323. Now we will stick to that, won't we?

A. Yes.

XQ. 324. Now, how long, as far as you know, is that understanding to last?

MR. ANDERSON: Same objection, and I understand that an exception is noted in each case.

THE COURT: The objections are reserved and no exception is needed, but in order to preserve all rights, we will assume that an exception is entered on each ruling.

A. As I told you, I have no ground for abstaining from an answer. I am not sure about it. It is all published in the newspapers, so I can't tell.

XQ. 325. It is published, you say?

A. It is published. It must be somewhere, and I do not know anything what is not published about this matter.

XQ. 326. Now, Doctor, I have here a book which is entitled "Handbuch der Deutschen Atkien Gesellschaft." You know that publication?

A. Yes, I know it.

XQ. 327. It is a reliable publication, is it not?

A. I do not know whether any word of it is reliable, but generally it is a good book. I am not responsible for the contents.

XQ. 328. What is that?

A. I am not responsible for the contents of it.

XQ. 329. Of course not. You did not write it. But it is a book that you use for general reference in Germany?

A. Yes, for superficial reference.

XQ. 330. Now, do you not know, and I direct your attention to the page in this book which refers to the Badische Company, beginning at page 1806——

MR. KRESEL: May I approach the witness?

THE COURT: Is there objection to it?

MR. ANDERSON: Certainly.

THE COURT: Before doing that, let us see if that is not a step beyond cross-examination, assuming that all other questions have been in cross-examination. If your cross-examination has been for the purpose of laying a ground for showing the interest of this man in this suit, then does the length, the precise length of this community of interest to which you now refer, if unknown to this man, form any groundwork or basis by which you may further interrogate him with respect to his interest or which would show his interest in any event? If he finds out now, after his examination is given, "Here is a more inuring interest than I realized," it would not affect his testimony.

MR. KRESEL: I am not questioning him on this line as to his interest. I have passed that. These questions are directed to the question of value. I am trying to develop that in Germany there was a combination, a trust, of all of the large chemical concerns; and your Honor can see that the value of patents to such a combination is entirely different from that of the value of the same patents to the American consumer or the American public.

THE COURT: Then I wonder, Mr. Kresel, if this would not be as far as you would need to go, assuming that your questions are otherwise proper, as to whether the duration of that joint venture is long or short. Whether it terminates in 1999 or 1989 would be immaterial for the purposes of this suit.

MR. KRESEL: All right, your Honor. I think your Honor is quite correct. Let me put another question to the Doctor.

XQ. 331. Doctor, that community of interest or agreement still exists, does it not?

A. Still exists; yes.

XQ. 332. And existed in 1919?

A. Yes.

MR. KRESEL: I will abandon any further attempt to get the correct time.

XQ. 333. Now, Doctor, under this arrangement, all of these companies pooled their profits, did they not?

A. I am not an expert for this, I told you.

XQ. 334. I am not asking you as an expert. I am asking you as to what you know about it and I want you, Doctor, to give us the information. Now, you know. You are an officer of this company, and you know, don't you, that all of these concerns in the arrangement or the community of interest pool their profits, and that then they are divided according to agreed percentages?

MR. ANDERSON: One moment, if your Honor please. I want to object. I cannot conceive on what possible theory, with all deference to counsel, the question of whether the Badische Company has pooled its profits with some other company can have anything to do with the patents owned by the Badische Company or with the interest of this witness as an officer of the Badische Company in the patents of the Badische Company.

THE COURT: As I understand, Mr. Kresel has passed the interest stage of this witness and he has gone to the basis on which he gave his testimony with respect to values. I do not see myself, Mr. Kresel, how that will help me in determining as to whether he laid a proper foundation for this evidence with respect to values or not.

MR. KRESEL: Your Honor will recall the witness undertook to give testimony as to profits, as to profits which his company realized on 65 certain

patents, and as to profits, I think, with reference to some of the tanning patents.

It seems to me that this is directly in line with that direct testimony. I want to show that the profits that he speaks of are profits which do not accrue directly to his company, but that they are pooled with the profits of other companies, and that then the profits are distributed among all of the companies, according to agreed percentage. It seems to me that is proper cross-examination.

THE COURT: Tending to what ultimate result, Mr. Kresel? I miss it, I am frank to say. I miss the relevancy. It may be very patent, but I do not see it.

MR. KRESEL: Tending to this, your Honor; that if the profits which the Badische Company makes on exports of products manufactured under these patents do not belong to it directly, but may be used for the purposes of making up losses of some other concerns in the combine, it cannot be made the proper basis for determining the value of the patents to this one company. It may be a proper basis for determining the value of the patents to the combination and that is the reason I want to develop the combination.

Of course, as we shall contend in this case, the value of these patents to the German combination was very large. It does not follow that they were at all large to an American who starts in from the groundwork to work up his factory. I want to show the power of this combination. I want to show what it can do with patents; I want to show what it did with the patents. I think that is well in line with the direct examination.

MR. ANDERSON: If your Honor will permit me, Mr. Kresel in his last sentence has stated a reason for his examination. I do not mean to

say he has not been frank before. But their theory, as set up in the answer in this case, which we moved to strike out, is that because the German interests used these patents for the purpose of producing large profits to Germany, that, therefore, the transaction and sale was justified. That is a very crude statement of the position, but that is in substance it.

We moved to strike that out because it is utterly immaterial and we regard it as utterly immaterial to this examination. If the Badische Company made a profit, it may have given all the profits to some other company. It was not a matter of any concern as affecting the value of these patents, what it did with these profits. That is not the question. It is a question of what you can realize on the patents. Therefore, it seems to me that this is entirely aside from the line of original examination. Unfortunately, before we argue that proposition before your Honor, we are taking evidence. It is very embarrassing. I really do not know that we are not losing more than we gain.

MR. KRESEL: But Colonel, don't you see that the fact that a combination of interests can make a certain profit does not indicate that a concern standing alone would make that profit?

THE COURT: But does not your question go beyond that? I can follow you, without passing on it. I can see your point of view up to that point; but my difficulty is that your question is directed to something beyond that. You have shown your community of interest which goes as a basis for the valuation or the interest of this witness.

MR. KRESEL: I think as to that it applies to both. But certainly it applies as to the value.

THE COURT: Will you read me the last question, Mr. Stenographer?

(Question repeated.)

THE COURT: They pooled their interests. You have it there. Now, then, whether they are divided according to agreed percentages, for purposes of this cross-examination, seems to be immaterial.

MR. KRESEL: Let me take your Honor's suggestion. I will strike out of my question the latter portion of it which speaks of dividing the profits according to agreed percentages.

Now, then, may I have the question read?

(Question repeated as follows): "XQ. 334. I am not asking you as an expert. I am asking you as to what you know about it, and I want you, Doctor, to give us the information. Now, you know. You are an officer of this company, and you know, don't you, that all of these concerns in the arrangement or the community of interest pool their profits?"

MR. ANDERSON: May I just say, in addition to what I have already said, that it cannot apply to interest, because that is the point we have been following, and he says he is still following, for the reason that these profits are owned by the Badische Company and therefore the interest of the witness is the primary interest of the owner; and the fact that somebody else may be in a pooling interest with the Badische Company, however indirect an interest in the earnings, does not increase his interest in the Badische Company in any way.

THE COURT: I understand your point, but as I understand Mr. Kresel, he is asking now for information to get a basis for the witness' valuation of these patents. That is, the witness has

placed a valuation on them in the light of the German situation, as I understand it. Now, then, whether that will be proper when we come to weigh it on the scales of justice, I do not know. The objection is overruled in the usual way.

Mr. Anderson: All objections are overruled in the usual way, unless otherwise stated, I understand.

XQ. 334. (Continued). Will you answer the question.

A. I know what concerns my department, that is, the patent department. I know the patents, the profits that are obtained under the Badische patents for the goods that we sell and manufacture. But I am not sure about what is ultimately made out of these profits. I told you what profits we have made, but what is done with the profits, that is not my business.

XQ. 335. You say that as an officer of this company you do not know whether its profits are pooled with the profits of the other concerns in this community of interest; is that your testimony?

A. No. You must understand in so big a concern the business is divided up, and one man cannot know everything.

XQ. 336. Is that your testimony, that you do not know?

A. Yes; that is my testimony.

XQ. 337. Well, do you know that the concerns in this cartel interchange patents?

A. Yes, I know that they do not interchange patents.

XQ. 338. You know they do not interchange patents?

A. No.

XQ. 339. And have never done it?

A. No. Patents are reserved to each firm.

XQ. 340. Pardon me.

A. The patents are reserved to the firm which produces them.

XQ. 341. Well, what is this community of interest then?

MR. ANDERSON: I renew my request, if this is going to be a definition of community of interest, that we ought to have the documents. This was not in the original examination.

MR. KRESEL: It does not appear there are any documents.

THE COURT: I think that goes to value. I will overrule the objection formally.

XQ. 342. You have told us there is a cartel or a community of interest?

A. Yes.

XQ. 343. Interessen Gemeinschaft?

A. Yes.

XQ. 344. You say that you do not know whether they pool profits?

A. Yes.

XQ. 345. You say they do not interchange patents?

A. Yes.

XQ. 346. What is the community of interest?

A. I am not quite sure about this, whether it chiefly consists in certain exchange of experience, the arranging of selling conditions by avoiding underselling and unfair competition between our firm. I don't want to say "unfair", but unsound competition.

XQ. 347. You mean they arrange how much each should sell in a certain territory; is that what you mean?

A. No. I think it is more related to the prices.

XQ. 348. That is, they agree upon what prices they should sell at?

A. Yes, or the minimum prices.

XQ. 349. And that refers to exports as well as domestic?

A. I think so. As I told you, I am not concerned with that business.

XQ. 350. You say you did not interchange patents. Do they issue licenses one to the other?

A. In certain cases, yes. Not general. In such cases where it is in the interest of the community. That is the community of interest.

XQ. 351. During the war, Doctor, these chemical concerns in Germany worked mostly on war work, did they not?

A. I do not know whether it was mostly.

XQ. 352. Very largely?

A. Largely, yes; of course.

XQ. 353. They made poison gas, for instance?

A. Some of them, yes.

XQ. 354. Did not your company make poison gas?

A. Which company?

XQ. 355. Your company.

A. No.

MR. ANDERSON: What can this add to the situation? We are not at war.

MR. KRESEL: I will answer that. We plead in our answer and our separate defense, that one of the considerations moving to the Government for the conveyance of these patents was that the Foundation gave to the Government a perpetual license to use all of them free of charge.

THE COURT: I missed that entirely, Mr. Kresel. It may be my fault, but won't you say it again?

MR. KRESEL: I say, we claim in our separate defense that one of the considerations moving to the Government——

THE COURT: This Government?

MR. KRESEL: Yes, your Honor—for the conveyance of these patents was a perpetual license given to the Government, the Navy and the War Departments, to use free of charge during the entire life of the patents any of them for war purposes, the making of explosives.

THE COURT: Is this question then directed to value?

MR. KRESEL: Yes, your Honor.

THE COURT: As showing what?

MR. KRESEL: As showing the value of these patents for the purpose of making explosives, war purposes.

THE COURT: And the ultimate showing being that the value placed by this witness upon those patents is from the German standpoint and not from the standpoint of the sale made by the Alien Custodian in this case?

MR. KRESEL: Yes, your Honor; and not only that. I want to follow that up later with showing that in the manufacture of the products that he spoke of, there were others that he did not mention, namely, products used for war purposes.

THE WITNESS: Your Honor will permit me a remark?

THE COURT: No. Mr. Anderson, I have his contention. Do you want to be heard?

MR. ANDERSON: I think it would probably be better if I state my position at greater length there. In the first place, in reply to Mr. Kresel's suggestion that this relates to his affirmative defense, he is making the witness his own witness, of course.

THE COURT: I do not understand it that way. I will be very glad to hear you on that, Colonel Anderson.

MR. ANDERSON: If your Honor will permit me,

the claim as now stated—I won't take the time to go to the answer—is that one of the considerations to the Government of the United States for the sale of these patents to the Chemical Foundation for $250,000 was the benefit accruing to the United States by having the right to use these patents for war purposes; that is, without paying license fees —for strictly war purposes.

In the first place, I do not concede that such right is reserved in this case. That will involve an argument on the assignments and I am not going into that now. But as a matter of law, since the Government of the United States had seized these patents and had a perfect right under the law to confiscate them, and held them in its possession by Act of Congress, what possible consideration could it be to the Government of the United States, if it wanted to take them from the enemy at a nominal price, to turn them over to some corporation which might allow it to exercise the rights which the United States under the law could exercise without consulting the corporation. Therefore, there could be no such consideration running to the United States, because the United States got nothing by turning the patents over to somebody else, assuming that it reserved to itself the right which it had under the law absolutely without turning them over and before it turned them over.

THE COURT: In order to help me there, Colonel, would it follow or not that if the United States is selling something, but is not selling it all, the part sold may be of less value than if it had sold all. We are assuming that the title was in the United States, that the whole title to the patents was in the United States the day before the sale. If I understand Mr. Kresel, it is that the

United States did not sell to this purchaser the entire interest, but it held back and reserved a certain right that would not go with the title, but which was reserved; and which right, I assume Mr. Kresel intends to contend, was one of the valuable rights under the patent.

MR. ANDERSON: Yes, your Honor, but this transaction took place after the war and the sole question of value here involved is the commercial value of these patents. I asked only for the earnings derived from importations into the United States at a time when the war was not in progress; and therefore it was purely commercial importation. Therefore, the question of whether these patents could be used by the German Government or might be used for any purpose in time of war or could be used by the United States Government in time of extraordinary emergency such as war, cannot have any bearing upon the commercial value of these patents for commercial purposes. My question was in every instance this morning limited to the commercial fair market value for commercial purposes.

I did that for the reason, among other things, first, that it had nothing to do with Government use; and second, I did not want to get into an argument in advance on a question which goes to one of the main legal propositions in this case. I wanted to get by this deposition, if I could, without doing it. At the proper time I will raise the question.

THE COURT: Then your contention, Colonel Anderson, is that the evidence which you adduced from this witness was only the commercial value and not the full value of the patent?

MR. ANDERSON: Yes, related to the commercial value, strictly on the commercial value. Now,

whether there was any value in the patent for some other purpose than its commercial value, I have not inquired and do not propose to inquire, because the commercial value in my judgment is sufficient to meet the point that I have to make; and I do not think the United States Goverment has any concern with that question when we come to it.

I do not care to go into the question now except not to leave the question unanswered.

I would like, with your Honor's permission, to make this additional statement for the witness. I told him he must answer the questions of counsel, of course. I should have said, which I assume the witness of course would know, that if he did not know of his own knowledge, he had a right, if he did not know actually, to say he did not know because in some instances, after saying he did not know, he has undertaken to state certain matters as to agreements, etc., as to which he cannot testify.

THE COURT: Of course, that ought to be modified, Colonel, just a bit. I have got to assume at this point that this is cross-examination. Of course, one of the very difficulties of counsel in cross-examining a witness sometimes is the answer "I do not know"; and in cross-examining, counsel has a right, by any number of questions he desires, to show that he does know.

MR. ANDERSON: Undoubtedly so. What I meant was that if he absolutely did not know, he was under no compulsion of trying to answer something he did not know about. I thought probably the witness, being unfamiliar with our procedure might do that. I know Mr. Kresel would not want him to do that, but it seemed to me, he might.

THE COURT: Do you want a formal ruling at this point or do you want to say anything in reply, Mr. Kresel?

MR. KRESEL: I simply want to point out, your Honor, that quite aside from any consideration remaining with the Government, I am entitled to inquire on this line for this reason also; that the witness this morning undertook to describe certain products which were manufactured under these patents. He said nothing about any products that were manufactured for military purposes.

I think I have a right to develop all of the products that were being manufactured under these patents in Germany and to show, if I can, that the witness' judgment as to the value of the patents is based not only upon the products that he mentioned this morning, but upon all the other products.

THE COURT: The objection is overruled.

By MR. KRESEL:

XQ. 356. During the war, the chemical concerns who were in this community of interest manufactured, to a very large extent, explosives for the Government, did they not?

A. Yes.

XQ. 357. Indeed, the Haber patents that you testified about this morning were the patents under which the German chemical factories were enabled to extract the nitrogen from the air to combine it with hydrogen and produce ammonia, which is an essential in the making of explosives, is it not?

A. Yes, it is.

XQ. 358. But for the fact that the chemical concerns in Germany were enabled by this Haber process to supply the German Government with the essentials for the making of explosives and poison gases, the

German Government could not have continued with the war, because the Chilean Nitrates, from which explosives had theretofore been made had been cut off; is that right?

A. Ammonia patents have nothing to do with poison gases.

XQ. 359. Well, I will take your answer as to that, but I am not confining my question simply as to poison gases?

A. But you mentioned them.

XQ. 360. Also as to explosives, is it not the fact?

A. I think so.

XQ. 361. That before the processes under the Haber patents were perfected, explosives were made from Chilean nitrates which were imported from Chile?

A. Before the patents were perfected?

XQ. 362. Yes, before you could get this atmospheric nitrogen by the Haber patent?

A. Yes.

XQ. 363. And of course, very shortly after the war started, the British blockade cut off the importations from Chile?

A. Yes, sir.

XQ. 364. The value, therefore, of the Haber patents to the German cartel included the value of being able to supply the Government with the essentials for explosives, did it not?

A. No, that is entirely wrong.

XQ. 365. You spoke of about 450 to 500 patents that had been seized here, belonging to your company?

A. Yes.

XQ. 366. Did your company at any time since taking out any of those patents and up to the time that they were seized, manufacture under any of them in the United States?

A. I think not.

XQ. 367. So that these patents stood here and were taken out by your company, not with the purpose of manufacturing under them in the United States, but for the purpose of making it impossible for any Americans to produce either the article which was covered by a product patent or use the process, if it was simply a process?

A. No, that is not the purpose.

XQ. 368. What was the purpose in taking out these patents, if during all these years, your company did not turn a wheel in making anything under them in the United States?

A. The purpose was to secure us the right of importing dye stuffs and stopping German firms from maufacturing products and importing them; and on the second hand, Swiss firms and British firms from manufacturing them and importing them; and only slightly may it have been to stop American manufacturers from manufacturing them. But I do not think this was the idea, because there were no American manufacturers that we had to fear.

XQ. 369. You are quite right. There were none. Now, Doctor, the product patents gave you the right to prevent any other manufacturers from importing into the United States the article covered by such a patent, did it not?

A. That is it.

XQ. 370. In other words, with these patents taken from the United States Government, you sought to have a monopoly here with reference to such articles as were covered by the product patents, not only a monopoly against Americans but also against any other nationals from any other Government that might desire to import?

A. That is the real nature of a patent, yes.

XQ. 371. Again, Doctor, these chemical concerns in Germany——

A. Firms. You mean firms.

XQ. 372. Well, we use the term interchangeably. Still I will use the name "firms".

A. We use the term, simply for illustration—we use the term "concern" for a trust.

XQ. 373. Oh, I do not mean that. I mean firms. These firms that were in the community of interest, in the development of many chemical products, were able at very short notice to turn their plants into producing explosives and poison gas, were they not?

MR. ANDERSON: If your Honor please, I object to that. We are not fighting the war.

THE COURT: No, we are not, Colonel. I will hear you as to the relevancy, Mr. Kresel. I do not see it at the moment.

MR. KRESEL: If your Honor please, that is in line with the other questions that we have had upon the additional production of articles, going to the value of the patents, which the witness did not mention this morning.

THE COURT: This is still addressed to value?

MR. KRESEL: Yes, sir.

THE COURT: The contention being that in the value that he placed upon these patents, he was looking at it from the German standpoint.

MR. KRESEL: Yes, your Honor.

MR. ANDERSON: May I suggest, if your Honor please, the question of value this morning related to the United States patents exclusively; that is, to the value of the right of importation which they controlled and manufacture. The testimony as to the amount of income related exclusively to the income derived from products imported into the United States.

MR. KRESEL: Under the German patents.

MR. ANDERSON: Suppose they have in Germany an enormous value. Suppose they can convert their goods into war products. What has

that got to do with the value of the United States patents that does not help him.

MR. KRESEL: You miss my point, Colonel. It is my fault. I did not make myself clear. What I am trying to say is, your Honor, that by reason of the peculiar facilities of these large German chemical concerns that have been in the field for generations, the value of these patents, because of the number of products that they can make under them is something upon which a value of the same patents in the United States cannot be based.

THE COURT: Colonel Anderson's answer to that is that he did not attempt to base it on that, but that the only use theretofore of those patents in the United States was of German patents sold in the United States from which a commercial profit of so many dollars was derived at a certain time; and that the valuation of this witness having been predicated upon that premise or that fact, that necessarily, in reaching that conclusion, he excluded the basis which you are now attempting to show. That, as I understand is the difference between you. You, as I understand, were suggesting that you have a right to inquire as to all these facts and let the Court draw its own conclusion as to whether it was possible, from his standpoint, to base a valuation, his valuation, on precisely what he said, without taking into consideration other things.

MR. KRESEL: In other words, I am not concluded by this witness' statement.

THE COURT: Not at all, but is that your view?

MR. KRESEL: Exactly. Your Honor has that

THE COURT: Is there anything you want to perfectly in mind.

put on the record, Mr. Anderson, before the ruling?

MR.. ANDERSON: I just wish to make this statement for the record, that the direct examination of this witness on values was confined to the value of patents issued by the Government of the United States, seized and sold to the Chemical Foundation in the United States and that the sole inquiry was directed to the value of those patents in the United States to the owner in Germany.

THE COURT: To the German owners.

MR. ANDERSON: Yes, to the German owners. True, the various elements are under the control of those owners, the control of importation, the control of manufacture, which the patent law gives to a patentee; and therefore, what use can be made of those patents in Germany, what use may have been made of them in Germany, and what the German manufacturer can do with his plant, not only including the owner of this but all other German manufacturers, is entirely outside of the direct examination or of any appropriate or proper cross-examination thereon, as relating to elements that were in any way involved in the inquiry on direct examination.

THE COURT: The issue is very clear. A formal ruling is made overruling the objection.

MR. ANDERSON: I understand all this examination is to be subject to objection and the usual ruling.

MR. KRESEL: That is my understanding, your Honor.

XQ. 374. Will you answer the question.

A. None of the plants for these patented products here could be converted into a plant for poison gas. They do not relate to poison gas and do not relate to ammunition.

XQ. 375. And you mean that the plant which manufactures dye stuffs was not, in point of fact, during the war, used for the making of essentials that went in as ingredients of explosives?

A. No plants for these patented dye stuffs. Perhaps a plant for some intermediate which is very old and can be made everywhere, but not the plants for the patented products. That is what I mean.

XQ. 376. But the dye stuffs are made from intermediates, are they not?

A. The patents are not for the intermediates.

XQ. 377. But dye stuffs are made from intermediates?

A. Yes, of course.

XQ. 378. You mean that among the 450 patents that you testified about this morning, there are no patents covering intermediates; do you really say that?

A. Maybe some of the others, but none of them are related to ammunition or explosives. I am not quite sure about this.

XQ. 379. I did not ask you about patents covering explosives. Do you mean to say that none of your patents cover intermediates?

A. Yes, they do, some of them.

XQ. 380. What I had in mind specifically, for instance, just to illustrate the point that I am asking you about in making a dye called "sulphur black"——

A. That is not patented.

XQ. 381. Won't you let me finish my question?

A. Pardon me.

XQ. 382. In making a dye called "sulphur black" —that is a black dye, is it not?

A. Yes, I know.

XQ. 383. A slight variation in the final state of that manufacture would turn the product into picric acid, would it not?

A. Yes.

XQ. 384. And picric acid is one of the essentials used in the manufacture of explosives, is it not? It is an explosive, in fact?

A. It is, but it is not much used. It is not used to a large extent, I do not think.

By Mr. Kresel:

XQ. 385. All right, I will take T. N. T. One intermediate which is produced in the maufacture of coal tar dyes is a substance called paramonatoluol?

A. Yes.

XQ. 386. And from that T. N. T. is made, is it not?

A. It may be.

XQ. 387. It can be made?

A. In a similar way, yes.

XQ. 388. But it can be made?

A. But, permit me to say, it has nothing to do with these patents.

XQ. 389. It has to do with intermediates?

A. Nothing with these patents.

XQ. 390. It has to do with intermediates?

A. The patents are all intermediates.

XQ. 391. However, for some intermediates, you have just said so?

A. Yes, but not for these.

XQ. 392. Let me go on please, do not argue with me. Now, in Germany, the Government assists the dye works, does it not?

A. No, that is entirely wrong.

XQ. 393. Has it ever?

A. No, never. That is propaganda. I saw it in your defense, but it is quite untrue.

XQ. 394. Did it during the war?

A. No.

XQ. 395. You mean——

A. The dye stuff industry has not been backed by the Government.

XQ. 396. Now, listen to me. Let me put my questions clearly to you, and then you can answer. Do you say that during the war none of these chemical concerns who were working for the Government were financially assisted by the Government?

A. Yes, they were, but not the dye industry.

XQ. 397. Well, did not you tell us that some of these chemical concerns that were engaged in the manufacture of dyes in peace times were converted into war-producing material during the war, did not you tell me that?

A. They took up additional work for war.

XQ. 398. Additional war work?

A. And were converted.

XQ. 399. Now, at the outbreak of the war, Doctor, how much of the world's supply of dyes did Germany supply?

A. I am not sure about that.

MR. ANDERSON: Is this—can this have any bearing upon the direct examination of this witness?

MR. KRESEL: May I answer that, your Honor?

THE COURT: Yes.

MR. KRESEL: Yes. My point is that the amount of dyes which were supplied by this combination in Germany indicates the strength of that combination. It indicates the monopoly that it had of producing and supplying dye stuffs, and it indicates what the value of such a monopoly of these patents would be.

MR. ANDERSON: If your Honor please——

MR. KRESEL: It is actually the same point that we have been arguing.

MR. ANDERSON: If your Honor please, sup-

pose the dye industry in the United States is a Trust—I mean in Germany it is a Trust—suppose the dye industry in Germany have enormous power. Suppose it is combined to get that power. If one of the members of that organization, or whatever you call it, I do not know whatever it is, or any other member has secured patents from the Patent Office of the United States in accord with the laws of the United States, and we are inquiring into the distribution of those patents and their value, what can the power of that industry in Germany, or its organization, or conduct of its business have to do with the value of the patents in the United States, located in the United States, and which can not have any bearing upon that power?

MR. KRESEL: May I make one further observation, your Honor?

THE COURT: Yes.

MR. KRESEL: If, as we claim, there was this combination, which had this tremendous power, would not that affect the value of the patents to an American here, who would buy them, and try to start up in business?

MR. ANDERSON: Allow me for a moment——

THE COURT: I was wondering, what Mr. Kresel was leading to in this situation. If the Germans prior to the war had a world-monopoly on dyes—whether the value to them on these patents which would not only tend to preserve intact that monopoly, but which, so far as I am now advised, would have kept the monopoly absolutely intact—whether the value of these patents in such a world-wide monopoly would not be far in excess of their value to any other person, because the minute a competitor got into the field, whether the mere keeping out of a competitor in a field as

large as the United States, would not such a world-monopoly—would that not give to these patents a value far in excess of what it would have been to A, B or C. That is the thing that I have been wondering about, as to whether he was not coming to sooner or later.

MR. KRESEL: That is what I have been directing this examination to.

MR. ANDERSON: If your Honor please——

THE COURT: I cannot decide that now, Colonel, and if that element is in it, anything tending to show the German monopoly, which so far as I now see it in the cross-examination, is equivalent to world-monopoly—anything tending to show that monopoly — would on that theory, if that theory is plausible—I do not know whether it is or not now—would it not be relevant to the valuation placed upon the patents by this man. I assume it would, at least, I would not be prepared now to negative it.

MR. ANDERSON: If your Honor will permit me to put this on the record in view of your Honor's statement, that I do submit that for a Court or any one else to undertake to draw a distinction between the value of patents for commercial purposes which give an exclusive right of manufacture, owing to importation to an individual or corporation of fifty million dollars as distinguished from a combination or corporation of two hundred million dollars, or two billion dollars is drawing a bow a little fine on the matter of distinctions, and seems to me so remote that it would be going into the realm of speculation, as to values, far beyond anything the Courts have ever gone into. I merely put that on the record, as, of course, I will not ask your Honor to consider

questions which involve a serious question at this time, and I renew my motion.

THE COURT: Is there such a question, will such a question ultimately be involved in this case?

MR. KRESEL: It will certainly be, your Honor, and it is raised by our separate defense.

THE COURT: I have no authority——

MR. KRESEL: Your Honor has not had time to study it.

THE COURT: I have not read particularly the bill, nor have I seen your answer at all, I am sorry to say. Objection overruled on the same basis.

THE WITNESS: What was the question.

XQ. 400. The question, Doctor, is for you to tell us what percentage of the world's supply of dye stuffs was supplied by Germany, prior to the war, just before the outbreak of the war?

A. I am not quite sure about the statistics, but I am quite sure about the fact that the dye stuffs which have been manufactured under these 470 patents also represented only a very small percentage of the world's supply of dye stuffs.

XQ. 401. But, Doctor, did not you say—I do not want to be offensive, but you are dodging the question and not answering it—I am not confining you to these patents, I am speaking broadly; but is it not a fact that Germany had a practical monopoly of manufacturing and producing dye stuffs all over the world?

A. No, that is no fact. I told you before that there are large manufacturers in Switzerland, and in England, and this Society for chemical industry, in Berlin and Elbenstein, and Brussells, and Holliday in England, and a lot of other firms.

XQ. 402. You seem to be much better informed of outside of Germany than in; but let me put that question to you: Is it not a fact that at the outbreak of

the war, Germany produced nine-tenths of the dye stuffs that were consumed in the whole world?

A. I am not certain about percentage.

XQ. 403. Whether you are certain or not, give us your best estimate; you have been giving us estimates on it; give us an estimate of that?

A. I can not give any estimate.

XQ. 404. You won't undertake to do that?

A. No, I can not. I wish I could, but I can not.

XQ. 405. And don't you know, Doctor, that when the war broke out, and the United States could not get the German dyes, that the textile industry of the United States was absolutely paralyzed?

A. I have also heard that in the United States, that there was no dye stuff industry at all, but that is no evidence that Germany had a monopoly. There was a monopoly in England and Switzerland.

XQ. 406. Surely, so far as the United States was concerned, Germany had a monopoly of dye stuffs before the war, had not they?

A. No.

XQ. 407. Have you answered it?

A. There was export from Great Britain and Switzerland, and that export was cut off because those countries needed their home production.

XQ. 408. Did you tell me that your patents covered—your product patents did not permit importations from England, Switzerland and France?

A. But I told you that was only a small percentage of patented dye stuffs, and you reversed the question and asked for all the dye stuffs, that is the difference.

XQ. 409. And that is your idea?

MR. ANDERSON: I object to some of this argument between counsel and witness. It is not cross-examination.

MR. KRESEL: I am through with that.

Mr. Anderson: Let the witness answer the question.

XQ. 410. Now, you undertook to give us the fair market value of patents, did not you?

A. Yes.

XQ. 411. Just what do you mean by the market value of a patent; do you mean that there is a place somewhere, where you can go and buy patents; is there an exchange where you can buy patents?

A. You know yourself that there is no such place.

XQ. 412. Then, what do you mean by a market value of patents; I want your meaning of it, so that we can see what your testimony is worth?

A. I think the market value of the patent is the value which the patent had for the inventor or the owner of the patents, and for which he probably would have been willing to sell them.

XQ. 413. Well, of course, if that is the witness's understanding, and that is what you understood by—that is what you mean by your testimony when you gave the market value of these patents, was it?

A. Yes, I think that is a possibility.

XQ. 414. All right. I am quite content with your answer. Now, the value of the patent depends upon the person that owns it, being able to prevent others from using it, does it not?

A. No. The person is quite immaterial. The value of the patent is defined by the value of the product which is manufactured by it. The owner is of no importance whatever.

XQ. 415. Apparently you did not understand the question. I say the value of a patent lies in the fact that the person that holds the patent can prevent anybody that he pleases from manufacturing an article covered by that; is not that right?

A. No, that is negative, positively stating it. It

is the profits which he makes out by virtue of the patent.

XQ. 416. Of course he makes the profits because nobody else can manufacture without his permission?

A. Of course.

XQ. 417. We agree on that, don't we?

A. The patent gives the right of preventing others.

XQ. 418. Let me see if you will go along with me this far—a patent is valuable to a person who possesses it because he can either let somebody manufacture under it or refuse to let anybody manufacture under it; is not that right?

A. On the one hand, yes.

XQ. 419. Yes, take your concern, for instance, before these patents were seized, when you owned them—

THE COURT: Pardon me, may I make this inquiry, Mr. Kresel; is not that the matter of law; and cannot we——

MR. KRESEL: It is just a preliminary question, your Honor, to the question that follows:

XQ. 420. Would it make any difference in your opinion, as to the value of a patent, the fact that the person who owns it was compelled to give licenses to use that patent to anybody and everybody that applied.

A. Yes, of course, that raises——

XQ. 421. You have answered my question, "yes". Of course, that is all I want.

MR. ANDERSON: That is subject to objections your Honor understands.

THE COURT: Yes.

XQ. 422. When you gave us this morning——

MR. ANDERSON: I wish to state on the record in addition, the fact does not appear in this case, that any person was compelled to give licenses, or that the owners at the time of the sale of these

patents, whoever they were, were required to give licenses; and therefore the question is entirely outside of the facts as disclosed in this case.

XQ. 423. When you assumed to give us this morning your estimated value of these patents, did you assume that there was a clear title to all those patents?

A. Of course, yes.

XQ. 424. And did you assume that when they were sold, they were not subject to any outstanding licenses?

A. It depends on the number of licenses; when there are only very few, they may not alter much the value of the patent.

XQ. 425. But you are not answering my question, if you will pardon me for saying so. I am asking you directly whether when you gave to the Court this morning your opinion as to the value of the patents, that opinion was based upon the assumption that no licenses affecting the patents were outstanding, just yes or no?

A. Yes.

XQ. 426. Now, Doctor, I understood you to say this morning, that you had repeatedly bought patents, so that you are familiar with methods of buying and selling patents; am I correct in that?

A. Yes.

XQ. 427. Well, ordinarily, when you buy a patent from an inventor, you get from him all the information that he possesses as to the manner of operating under the patent, don't you?

A. Yes, ordinarily.

XQ. 428. Certain; and you get from him the result of his experience in operating, commercially operating under the patent, don't you?

A. Not commercially, mostly only——

XQ. 429. Strike out "commercially"—experience in operating under the patent, don't you?

A. Not "operating", that goes too far.

XQ. 430. Experience in producing under the patent?

A. Experience—but "using" goes too far, it tends to a commercial extent.

XQ. 431. I will let you use your own language, experience in doing what with the patent?

A. Simply to show its practicability.

XQ. 432. All right, and ordinarily, when you buy a patent, you obtain from the inventor or the manufacturer for whom you buy information as to the kind of plant that is necessary in order to work the patent, don't you?

A. No.

XQ. 433. You mean you buy a patent, and then invent your own plant?

A. The plant in those cases is very simple and can be shortly erected by our engineers. What we need is a sample, a sample how to carry it out.

XQ. 434. Yes. But if it is a patent that had already been commercially worked, of course the plant would have been there when you buy the patent, you buy whatever experience as to the plant, likewise, don't you?

A. I do not think that we agree over that——

XQ. 435. Whether you agree with it or no, that would not ordinarily accompany the sale of the patent, is it not so?

A. I did not get that.

XQ. 436. I say, ordinarily, if a manufacturer has operated under a patent, has built a plant for instance, and he sells that patent, the purchaser would get any information that the vendor has as to the kind of plant that is necessary?

A. That is very seldom, very rare cases.

XQ. 437. That is rare, is it not?

By THE COURT:

Q. 438. If the purchaser needs it, or that the inventor will furnish that disclosure, which do you mean?

A. Simply an example how to carry it out in the laboratory, that is sufficient for us.

By MR. KRESEL:

XQ. 439. Now, you said this morning, two or three times, that your patents were so drawn that an incompetent chemist can operate them?

A. Yes.

XQ. 440. Of course, you know, don't you, that before 1919, there was practically no chemical industry in this country?

A. Yes.

XQ. 441. And of course that America was not as rich in skilled chemists, as Germany was?

A. Of course.

XQ. 442. And do you really say, Doctor, that these patents that you have been testifying about, are so drawn that any patent chemist can take them and work them commercially?

A. In this country?

XQ. 443. In this country?

A. Yes, that does not require technical skill, but simply the scientific skill, and such chemists were in your country. I do not mean that it requires extraordinary skill also, but simply it requires more than a student has, of course, we know.

XQ. 444. You take your Haber-Bosch patents, for instance. You took out those patents not only in the United States but in other countries?

A. Yes, nearly everywhere.

XQ. 445. Belgium, for instance?

A. Belgium too.

XQ. 446. In France?

A. Yes.

XQ. 447. And I assume that your patents and theirs were equally as full in disclosure as those that you took out here in the United States?

A. Yes.

XQ. 448. And I think you will go along with me to this extent, won't you; you will say that France had at least as good chemists as we did in America?

A. Of course, yes, she has.

XQ. 449. And well, don't you know that notwithstanding that France had your patents, as we had your patents here, that the French Government is paying two and a half million francs to the German Chemical Cartel, for information as to how to manufacture under these Haber-Bosch patents?

A. They are not paying two and a half million francs. They are paying fifty-nine million francs, but not for the information—for the patents and for the information.

XQ. 450. For what?

A. For the patents, and for the information.

XQ. 451. But they had your patents; they had seized them, did not they?

A. They gave them back.

XQ. 452. Well, they had them before?

A. They had them before.

XQ. 453. And if the patents disclosed the process, they did not have to pay anything for any information, did they?

A. They did not pay for the information. They paid for the patents and for the information.

XQ. 454. But that is what you said—patents and information?

A. Yes, sir.

XQ. 455. Now, there were patents here on Salvarsan, were there not, you know that?

A. I know, but I am not acquainted with the Salvarsan business. It is not our firm.

XQ. 456. Now, to establish a chemical industry in a country like America, which did not have any, would require a large amount of capital, would it not?

A. Yes, I see it has been found, that capital.

XQ. 457. Would it require a large amount of capital?

A. Not so extraordinary large.

XQ. 458. And do you think, Doctor, that you are frank in making these answers?

A. Yes.

XQ. 459. And it would require, would it not, the building of a plant?

A. Of course.

XQ. 460. A large amount of plant?

A. It depends on the amount of dye stuff which is to be produced.

XQ. 461. If it was to take the place of the German dye stuffs that were being imported before the war, there would have to be quite a large commercial industry, carried on here, would not there?

A. I do not know. I do not think the amount of dye stuffs imported was extraordinarily immense.

XQ. 462. Now, your dye patents covered what are known as vat dyes, did not they?

A. Yes.

XQ. 463. Were there other sorts of dyes that could be used in the place of vat dyes?

A. Yes.

XQ. 464. Was there a form of dye called the Algo dye?

A. Yes, but it did not belong to our firm——

XQ. 465. I am asking you now as an expert, do you see?

A. Yes.

XQ. 466. You are a chemist, an expert?

A. It was simply to avoid confusion, if you wish to hear this, because we are concerned here with partnership credits.

THE COURT: Mr. Kresel, do you care——

MR. KRESEL: I will be through, if your Honor will indulge me, I shall finish with this witness in about half an hour.

THE COURT: I was going to inquire as to whether you care to finish now, or take a recess until say half past seven; if you are going to finish in half an hour, you can finish now if you prefer.

MR. KRESEL: I shall finish in half an hour. How about you, Colonel?

MR. ANDERSON: I think that if Mr. Kresel finishes in half an hour, I certainly will not take over half an hour for any re-direct and we will get through.

THE COURT: I shall take a recess at the end of an hour in any event.

MR. ANDERSON: If you will reserve me half an hour to finish the re-direct, I think we shall finish.

THE COURT: You may proceed.

XQ. 467. Now Doctor, I wish you would tell us what patents you bought in 1919, giving the name of the person from whom you bought them, and describing the patents?

A. I did not get it, pardon me.

(Question repeated.) I cannot tell whether we bought any in 1919—I cannot tell.

XQ. 468. I ask you the same question as to the year 1918?

A. I cannot tell it, any year.

XQ. 469. Is your answer the same as to 1918, as 1919?

A. Yes.

XQ. 470. I ask you the same question as to 1917. is your answer the same as in reply to my question with reference to 1919?

A. Yes.

XQ. 471. Now, you assigned this morning, as the value of the 58 so-called Haber patents—you said that it was seventeen million dollars?

A. Yes.

XQ. 472. Did you arrive at that figure by assigning a separte value to each of the fifty-eight?

A. No. They can not be separated as a whole.

XQ. 473. "No" was the answer?

A. No—yes.

XQ. 474. Well, will you enlighten us as to how you came to the conclusion that it was seventeen million dollars?

A. Yes, I can. I arrived at this figure in that way, first, Germany is now producing three hundred thousand tons of fixed nitrogen by the Haber-Bosch process. The conditions in Germany and in the United States of America, as to the consumption of nitrogen fertilizers were about the same before the war. I always refer to the time before the war, because the conditions are so directly different since then.

XQ. 475. I did not get that last?

A. The conditions are different. For that purpose I refer to the time before the war—excuse me.

XQ. 476. Then you are talking about 1913?

A. 1913.

XQ. 477. Go ahead.

A. The conditions are not much far different now as I understand from your magazines, and official reports. The United States is about producing one hundred thousand tons of nitrogen in coke ovens and has a big demand for salt petre, which amounts to about the same quantity, one hundred thousand tons of nitrogen, and those were the conditions in Germany,

about so, and we constructed in Germany, the Oppau plant which is now producing one hundred thousand tons of nitrogen, and the Mersenburg plant, which is producing two hundred thousand tons; and the production of these two plants, is gladly taken up by the agriculture and I suppose—not I suppose—I am sure that the United States would be ready at any time to take up a supply of as little as seventy-five thousand tons of fixed nitrogen yearly, and this, at the rate of one cent royalty per pound of nitrogen, and the average term of ten years for the outstanding life of the patents gives seventeen millions of dollars, and another basis is the contract you have mentioned that we have had to make with the French Government and this provides for the establishment of a plant for thirty-six thousand tons, and I understand the thirty-six thousand tons is a rather small figure; and if my concern assumes that seventy-five thousand tons would be likely to be consumed in the United States, which has a much bigger area than France has, that is a very moderate basis.

XQ. 478. Is that all?

A. That is it.

XQ. 479. Do I understand then, that you assume that if the United States—or if somebody in the United States could not produce nitrates under these Haber patents——

A. Or ammonia.

XQ. 479 (continuing)—and if the demands of the country were such as to absorb a supply of three hundred thousand tons a year——

A. No, not so much.

XQ. 479 (continuing)—that then the profits that would be realized from that, would be such as to make patents worth seventeen million dollars?

A. Yes, but it is a misunderstanding. I did not suppose that the demand must be increased to three

hundred thousand tons, this ammonia production may substitute a part of the imports from Chili. It may substitute the whole production of the United States and create a national industry.

XQ. 480. You realize, don't you, Doctor, that you are asked to give the value of these patents to the American industry, not to Germany?

A. Of course, yes.

XQ. 481. And that is your testimony, is it?

A. Yes.

XQ. 482. Well, have you in all your reading of magazines and official documents which you mention informed yourself as to the actual result of the working in the United States under the Haber patents since 1919; without theorizing now, do you know what the actual results were?

A. Yes, I know thereabouts.

XQ. 483. Will you tell the Court what you have learned as to the actual results?

A. I have learned that a plant in Syracuse is producing three thousand tons a year, but I have also learned that the Nitrogen Committee which was instituted in 1916, recommended that the United States Government should build a plant for a capacity of about thirty thousand tons, an initial plant.

XQ. 484. Then, your information is that the progress of the art here, in so far as working under the Haber patents since 1919, is that a plant in Syracuse has been built which produces three thousand tons a year?

A. Yes, sir.

XQ. 485. Now, you say that you can not separate these fifty-eight patents and assign a value to each of them. What is there extraordinary about that that makes it impossible to do that?

A. They belong together. They cover the various steps of the process which follow after the other,

one for the nitrogen and one for the combining of ammonia, and the third for the separating of the ammonia, and all for the same subject.

XQ. 486. In other words, you mean that ammonia can not be producel under these Haber patents without using all fifty-eight of them?

A. No, I do not mean that, not all the fifty-eight must be used.

XQ. 487. Well, which ones may be used?

A. I can not state it from memory. It depends on the local conditions, other circumstances. Some must be used, at any rate.

XQ. 488. Have you familiarized yourself with the purposes to which the production of this Syracuse plant have been used?

A. For which the products are used?

XQ. 489. Yes.

A. No, I do not know.

XQ. 490. Don't you know it is being used only for refrigeration and not for fertilizer?

A. I do not know, but it may be right. The products of the Oppau Mill are also used for other purposes, also for refrigerators.

XQ. 491. You make fertilizer in Germany, don't you?

A. Yes, and liquid ammonia for refrigeration and other purposes.

XQ. 492. And Germany now produces three hundred thousand metric tons a year?

A. Of nitrogen, yes, including nitrogen.

XQ. 493. By those Haber patents?

A. Yes.

XQ. 494. Now, what was it that increased the value of these Haber patents in your mind, from the seventeen million dollar figure this morning to twenty million dollars this afternoon?

A. That was—it was supposed the consumption

or production of the United States would be one hundred thousand instead of seventy-five thousand, that is the difference, a rather small difference.

XQ. 495. And of course, if you assume that the consumption would be five hundred thousand tons, the value would thereby be increased?

A. I would not assume that. That is too much, perhaps. I wish to give a minimum and a moderate estimation, which can surely be fulfilled.

XQ. 496. Yes, but the result is that only three thousand tons a year have been produced?

A. That is no evidence.

XQ. 497. Now, the value of the process under the Haber patents, would depend somewhat upon whether or not Chilian Nitrates could be bought in the market at a cheap rate, would it not?

A. It never can be bought as cheap as synthetic ammonia.

XQ. 498. And yet you know that Chilian nitrates are being very largely used in the United States at this time?

A. Yes, I know they have also been very largely used in Germany before the war, and, nevertheless, synthetic ammonia has superseded it, or shut it off.

XQ. 499. Well, from such investigation as you have made, would you say that the United States is continuing to use more expensive Chilian nitrates instead of ammonia produced under the Haber patents, because they can not produce it?

A. No, I do not think that. They can. Perhaps there was not proper management, or other circumstances. I think it ought not to have been impossible to institute——

XQ. 500. Of course, there is no difficulty in Germany in getting the proper management. You have not found any difficulty?

A. No.

XQ. 501. You have found no difficulty in Germany in installing the proper plant?

A. No.

XQ. 502. You have found no difficulty in Germany in getting the skilled scientific men to work these patents?

A. No, we had no difficulty.

XQ. 503. You found no difficulty in getting all the information that is necessary in order to know how to work these patents?

A. We need not get it. We have it. This is ourselves.

XQ. 504. Now, you were telling us about three tanning products that were made under the tanning patents. Would you mind indicating under which patents those were made?

A. I can.

XQ. 505. You mean, of course, by these product patents, don't you?

A. I don't know whether they are product patents. One is a product patent, 12367405.

XQ. 506. That is a product patent?

A. That is a product patent, 1237405 and 1336759. That is a product patent, and there are patents for tanning, 1216612, 1281494 and 1289280. I think there is one important patent still missing. That is 191480 for tanning.

XQ. 507. You have spoken of Oppau, the factory there manufactures nitrogen?

A. Oppau has not to do with tanning.

XQ. 508. No, I am speaking of nitrogen?

A. Nitrogen, yes, fixed nitrogen.

XQ. 509. And under these Haber patents?

A. Yes.

XQ. 510. Is that a very dangerous process?

A. No, it is not dangerous at all.

XQ. 511. There was a very serious explosion at

that plant, was not there—killed a great many people were not there recently?

A. Yes. There were five hundred killed, but that has nothing to do with the manufacture of ammonia. It was a kind of nitrate which was produced, and it exploded.

XQ. 512. Well now, do you mean to testify that all of your patents, all your dye patents, are both product and process patents?

A. Yes, each single of them, no, not each single some——

XQ. 513. You testified that way this afternoon?

A. That was a misunderstanding, not each single of them, but as a whole.

XQ. 514. Some are product patents, and some process?

A. And some are product and process as well.

XQ. 515. You said this morning that your patents in the United States were substantially like the patents that you had in Germany, did not you?

A. Except for the differences which are——

XQ. 516. Required by law?

A. There is a difference in the laws, yes.

XQ. 517. That is right. Don't you know that there is no such thing as a product patent in Germany?

A. Of course, I know. That is one of these technical differences.

XQ. 518. Well then, none of your German patents was a product patent?

A. Yes, it is, in a certain sense. The German patent law provides that the product is patented by a process claimed for in manufacture, according to the process claimed. The immediate process of the product claimed, is protected with a particular claim.

XQ. 519. Now, you will see, Doctor, that you are not answering my question. This product patent is a

patent which makes it possible for the owner of the patent to prevent anybody from making any article like the one covered by the patent, by whatever method it is made, is not that right?

A. Yes, that is right.

XQ. 520. Now, in that sense, do you mean that in Germany, you could get any such patent?

A. Not technically, but perhaps practically. It is very seldom that another way for making the same product is discovered——

XQ. 521. But if a man does find a different method of making the thing, you can not prevent him from making it?

A. When it is quite a different way—no.

XQ. 522. But not a product patent of the United States—if you get a product patent, to make a certain kind of dye, then, no matter by whatever other method anybody else may make that kind of dye, you can prevent him from doing that?

A. Yes, sir.

MR. ANDERSON: Is not that a question of law?

XQ. 523. You have been here you say since the middle of April?

A. Yes, sir.

XQ. 524. Who is paying your expenses?

A. My company, the Badische Aniline, to make it quite clear.

XQ. 525. I did not get that?

A. The Badische Aniline, to make it quite clear, the Badische Aniline & Soda Fabrik.

MR. KRESEL: The Badische Company. Now then, your Honor, I have a motion to direct to the Court with reference to this witness's testimony, and I will make it now, or I will wait until Colonel Anderson is through, with his re-direct.

THE COURT: It is your pleasure.

MR. KRESEL: I think perhaps it would be better to let Colonel Anderson finish his re-direct.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 526. Doctor, you were asked by Mr. Kresel about the arrangement between your company and the French Government for the use of these nitrogen patents, for a plant which you say had a capacity of thirty-six thousand tons a year?

A. Metric tons.

RDQ. 527. I beg your pardon; metric tons; when was that arrangement made, what year?

A. It was made in November, 1919, but it got the consent of the French Chamber, just now, in December.

RDQ. 528. What return or compensation or value does that yield for the use of these patents in France?

A. As a whole, I stated fifty-nine million French francs.

RDQ. 529. Fifty-nine million French francs?

A. Five million as cash payment, and fifty-four million as royalties for the production.

RDQ. 530. And that covered a plant with a production of only thirty-six thousand metric tons; is that true?

A. Yes, full capacity.

RDQ. 531. Mr. Kresel in one of his questions said that you, in estimating the value in the United States, estimated the value of the profits on the production of nitrogen, at a plant such as you indicated. I understood you to make your value based upon a royalty of one cent per pound?

A. Yes, that is so, one pound of fixed nitrogen.

RDQ. 532. And you only estimated the value of seventeen million dollars arrived at in the method you described, based upon a royalty, for a license?

A. Yes.

RDQ. 533. Which was a charge of one cent per pound for the use of these patents and processes?

A. Yes, under the royalty.

RDQ. 534. You did not take into consideration at all the profits which might be realized by the manufacturer under that royalty?

A. No, that is not for the whole profit. It is only for a royalty, supposing that a license would have been given to an American firm, and an American firm would have made a larger part of the profits, and only gave us a part, one cent a pound as royalty.

RDQ. 535. You were asked as to the ability of the chemist in the United States to manufacture fixed nitrogen under these patents, as filed in the United States. There are chemists of high capacity in the United States, are there not?

A. Certainly, yes.

RDQ. 536. Is there any practical or technical or scientific difficulty about the manufacture of fixed nitrogen in accordance with the Haber process, from the patent granted by the Patent Office in Washington for the fifty-eight you mentioned?

A. Of course it requires some technical skill, but there is no extraordinary difficulty.

RDQ. 537. You were asked something about the war production in Germany, and the conversion of plants into war products for the manufacture of war products. Did you consider in giving your testimony, as to the value of the various patents as to which you testified this morning in the United States, that is, United States patents—did you consider in any way the war production in Germany, or the use of these patents during the war, as an element entering into the value of patents in the United States?

A. Dye stuff patents for the dye stuff, have nothing to do with war, as I have already stated.

RDQ. 538. Yes.

A. And as to the nitrogen patents, I have said it

is counted on a basis of seventy-five thousand tons of fertilizer, that is a very moderate figure, and would not be sufficient for a war production.

RDQ. 539. But the war production in Germany, or the use of these plants for war purposes, have nothing to do with your answer, according to the value of the United States patents, either on direct or cross-examination?

A. Nothing at all.

RDQ. 540. Was it considered in any way in arriving at the figures which you have given to the Court?

A. No, in no way.

RDQ. 541. Have you read the assignments in this case of the patents as to which you have testified, from the Government to The Chemical Foundation?

A. Yes, I read them.

RDQ. 542. It appears by reference to those assignments, that these rights are assigned by the Government of the United States of the patents or rights to The Chemical Foundation, without any reservation or qualification whatsoever?

A. Pardon me, what page?

RDQ. 543. I am reading page 416 of the original bill of complaint, from Exhibit No. H-1, which covers the greater part of each patent. The assignment is made by the Alien Property Custodian to The Chemical Foundation,——

> "without any reservation or qualification whatsoever, whether by reason of anything contained in the Charter or By-Laws of the said The Chemical Foundation, Inc., or otherwise, and subject only to the provision of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or friendly nations as set forth in the requirements or demands for certain of the said Letters Patent of the United States, applications

for letters patent, trade marks and registration thereof, copyrights and rights, interests and benefits under agreements."

I will now ask this in a hypothetical way, because it will come in after. If it should appear that the agreements referred to in that assignment are merely a release to the United States of any claim on account of past infringement, and is a reservation of the rights and interests of citizens of the United States and friendly nations, in and to those patents, if those rights and interests should be established, would the terms of that assignment to The Chemical Foundation as to patents in which the citizens of the United States or friendly nations had no interest or developed no interest, affect in any way the value of the patents as you have estimated it in your judgment? That is a very difficult question, but I want to get it, because I have got to prove all these things later on.

THE COURT: I do not understand it myself. It is my fault, not yours, but I will hear you first, Mr. Kresel.

MR. KRESEL: We object to it on the ground that it calls from this witness for the construction of a legal document. He is not qualified to give any such construction, and if he were, it is not the subject of expert testimony. We object to it upon the ground that it is immaterial and irrelevant. The document speaks for itself, and if certain facts should later be developed, as Mr. Anderson intimates they will be, the Court can attend to that question without any opinion from this witness.

THE COURT: May I hazard a guess as to what the question is——

MR. ANDERSON: That probably requires very great hazard.

THE COURT: Is that a limitation upon the title or right transferred to The Chemical Foundation, and are you asking this witness in substance, whether such a reservation makes any difference in his opinion?

MR. ANDERSON: That is the substance of it.

THE COURT: That is what I thought.

MR. ANDERSON: In other words, if your Honor please, the witness was asked on cross-examination whether the extension of licenses and experience in producing would affect his judgment on the value of these patents.

THE COURT: The concluding part of your question is what?

MR. ANDERSON: The concluding part of my question is—I do not want to repeat this, and I will ask it not be put on the record. I will try and explain it. The concluding part of my question is this: That eliminating any patents in which the citizens of the United States or citizens of a friendly country might have an interest, which interest is reserved, you see,—and I propose to prove later as to this, to which this provision would apply, eliminating that condition, would an assignment of all the right, title and interest in this patent, without reservation or qualification whatsoever, whether by reason of anything in the By-Laws of The Chemical Foundation or not—would such an assignment impose—would that assignment of that before you affect his value, as that he gave this morning? It does not involve a question of law or fact.

THE COURT: Does it not come down to this —if you establish as a fact that that reservation was not a reservation in fact, and he may have the complete title, we do not need any testimony from him to say——

MR. ANDERSON: Possibly. I think probably your Honor's position on that is correct, and I think it is correct in the second place, the question would be so hypothetical that it would be of very little value, and that we will have to prove by these facts anyhow. I wanted to get this witness' judgment free from that embarrassment, so I find it will be difficult to do it. I won't take up the time. I want to get through. It is not material.

RDQ. 544. Doctor, you were asked if you assigned a value of each of the fifty-eight nitrogen patents, so-called, or Haver patents, and as I understood, you could not, because they must be taken together. I want to ask if you can identify the product patents, and the process patents in the remaining processes other than the dye processes and products?

A. Yes, they can be identified.

RDQ. 545. How long would it take you to make up a list including the product patents and the process patents, separating the two, indicating the separation?

A. There are five hundred patents.

RDQ. 546. Yes.

A. It would take a few hours.

MR. ANDERSON: Mr. Kresel, would it be possible, to save time, for the witness to make that list which I would like to have, and I think you would like to have a separation of the product patents, as he identifies them—do not put this on the record.

THE COURT: I suggest the stenographer take it, and it can be stricken out.

MR. ANDERSON: Would you object to this witness having this in New York, taking a record, and submitting a copy of it, and we can

submit it to all parties, and I think we could save time?

MR. KRESEL: I have no objection.

RDQ. 547. Then, I will ask you, Doctor, to please make up, tomorrow, if possible, and furnish under the oath administered to you as a witness, as you are now, making a list, a list first of the nitrogen patents to which you have referred, or Haber patents second, a list of the tanning patents?

A. Yes.

RDQ. 548. A list of the tanning patents, and then, third, a list of the patents relating to the dye and different processes which you have classified, although not included in the other two classes, and have two copies of that made, and shall we stipulate it, or file it with the stenographer.

MR. KRESEL: He has to divide them into product and processes.

RDQ. 549. And then divide it, each class, into product and process patents, as far as you can do it?

A. Yes.

RDQ. 550. And furnish a file copy?

MR. KRESEL: Send them to you, and you can send us a copy.

RDQ. 551. Or send them to me. Send three copies to me, one of which I will file with your answer, with the stenographer, and one I will furnish to Mr. Kresel, and one to the Court. Will that be satisfactory? I think that will save a lot of time.

THE COURT: Then those go on the record as given to the stenographer?

List produced at trial and offered and admitted in evidence as "Plaintiff's Exhibit No. 606." *(See Exhibits, Vol. II, page 1438.)*

MR. ANDERSON: Yes. If your Honor please, I think that is all.

MR. KRESEL: Now, if your Honor will hear me.

THE COURT: No further questions?

MR. KRESEL: No further questions at all.

We now move that the testimony of this witness given by him upon the direct as to the value of these patents be stricken from the record in its entirety upon the following grounds: first, upon the grounds that were urged in the course of his examination, namely, that he was not qualified upon the basis of facts that he assumes, to make an estimate, and that the testimony was, therefore, immaterial and irrelevant.

More particularly, we now move to strike it out upon the ground that it is apparent from his testimony that he has a direct interest in the outcome of this litigation and is therefore disqualified to give testimony as an expert. Furthermore upon the ground that, according to his testimony, he was testifying, not as to the fair market value of these patents, but as to what his company or a company similarly situated would be willing to sell the patents for, which is far from being a basis for forming an opinion as to the market value of these patents.

We further move to strike out his testimony upon the ground that the testimony is based, according to the witness' statement, upon the situation as it existed in 1913, six years before this sale was made here in the United States, and that it is based upon the condition as it existed in Germany, and not in the United States; that the witness has stated that he did not have information as to the conditions in 1919 in the United States and has testified that he was not in the United States at any time prior to 1922.

Upon all those grounds, we move that his testimony as to the value of these patents be stricken from the record.

THE COURT: That concludes your statement?

MR. KRESEL: Yes.

THE COURT: May I ask this, Mr. Kresel: was the valuation of $17,000,000 the witness' value for all the patents in suit or only the value for a particular group?

MR. KRESEL: Only for the 58 Haber patents; and he subsequently changed that valuation to $20,000,000.

THE COURT: I recall distinctly his answer to your questions in cross-examination with respect to how he ascertained or how he arrived at the value of $17,000,000 and $20,000,000 for this particular group. I do not recall his testimony, if there was any, in cross-examination as to how he arrived at the value of patents other than the group which he appraised at $17,000,000.

MR. KRESEL: I did not, upon cross-examination, ask him specifically about any other patents. But I did ask him to tell us what he meant or understood by "fair market value."

THE COURT: As to all patents?

MR. KRESEL: As to all patents.

MR. ANDERSON: I did not understand his answer to be what you stated, Mr. Kresel. I could not hear it.

MR. KRESEL: He distinctly stated that what he meant was that that was the value which his company would have been willing to pay for these patents or his company would have been willing to sell them for.

THE WITNESS: No, not this. That is a misapprehension. I stated——

MR. KRESEL: No, Mr. Witness, please; you are through.

THE COURT: Will you take a seat?

MR. ANDERSON: I can recall him.

THE COURT: Unless you want to recall him, will you take a seat behind your counsel.

MR. ANDERSON: If he made the statement that his market value was solely what they would sell, what they were willing to sell for, which I did not hear—I was over here and could not hear and came over here for that reason—then I would like to have him recalled on that question, because I did not know it, I am frank to say.

THE COURT: You may recall him.

MR. KRESEL: If there is any doubt as to what the witness said on this subject, you can refer to the record.

MR. ANDERSON: I do not want to go over the record. I will just recall him.

THE COURT: Do not make your questions leading under these circumstances.

MR. ANDERSON: No, I will not.

KARL HOLDERMANN, recalled for further examination, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 552. On cross-examination it appears in the record that you stated, in speaking of market value that you understood market value to be what the owner would sell for, or words to that effect. Will you please state whether there were any elements in arriving at the value of these patents other than the

value at which you thought the owner could afford to sell?

MR. ANDERSON: Is that leading?

MR. KRESEL: I submit, your Honor, that that ought not to be the question.

MR. ANDERSON: I did not want to lead. I did not even want to indicate what the answer was.

MR. KRESEL: Of course, you did not. But that does not meet the testimony that he has already given. His testimony was distinctly this. I asked him what he meant by market value, and he said that he meant by "market value" what the owner of a patent would be willing to sell it for.

THE WITNESS: That is wrong.

MR. ANDERSON: One minute. Don't you interrupt.

THE COURT: Don't you say a word until you are asked a question. You are not in this discussion.

THE WITNESS: Excuse me.

MR. KRESEL: I think that the question which is now propounded to the witness is not calculated to meet that testimony because the question is whether there was anything else in the witness's mind. Do I get the question right, Colonel?

MR. ANDERSON: As constituting market value, yes; what were the elements that he considered in taking market value. You undertook to define as I understand, market value. That is a question of law. It is not a question of the witness' opinion.

THE COURT: If the witness put his appraisement upon one theory, which is an erroneous theory——

MR. ANDERSON: The valuation or market value goes out, and you would only consider his testi-

mony on other facts to reach a conclusion. I want to ask him then if he considered any other elements, or what elements he considered.

THE COURT: I think your question should not be put, Colonel Anderson, in the form it is now in. It should be more general, and if you want to ask him generally again, so far as I am concerned, in the absence of objection by Mr. Kresel, who may or may not make an objection, I should be very glad to take it.

Q. 553. I will ask you, then, this question: this morning I asked you to tell me what, in your opinion, was the fair market value of these patents. I will ask you now to state to the Court how you arrived at the fair market value of those patents?

MR. KRESEL: I doubt, your Honor, whether even that is the question. We have already upon cross-examination and upon direct——

THE COURT: I am wondering whether the mistake is not in recalling this witness, because he did testify in chief and he testified very fully and clearly on cross-examination what elements he considered in arriving at this valuation.

MR. ANDERSON: I think so. I will let him stand aside, because his opinion may be one thing or another. As long as he has given those elements in arriving at his conclusion, his opinion of market value may be one thing or another, but the elements are the thing that controls.

THE COURT: And the record discloses those elements?

MR. ANDERSON: The record discloses those elements very fully; and, therefore, in order not to delay your Honor, I do not want to go over the same ground. He has given the various elements.

(Witness excused.)

MR. KRESEL: Your Honor understands, I hope,

that the motion is directed alike to each group of the three groups of patents that the witness undertook to testify as to the value of.

THE COURT: My difficulty with that, Mr. Kresel, is this. I have a clear recollection of the $17,000,000 group. I have a clear impression with respect to that group. I do not as to the others.

MR. KRESEL: May I refresh your Honor's recollection?

THE COURT: Yes.

MR. KRESEL: The witness testified, as to the Haber patents, that the value was $17,000,000, and then he raised it to $20,000,000. He testified as to the tanning patents that they were worth $300,000. As to the dye patents, he was not asked and did not give any value. I do not know why the Colonel did not ask him.

MR. ANDERSON: He gave an earning value of $1,500,000.

MR. KRESEL: No, you are mistaken. He gave no value. You did not ask him, and he did not give any testimony as to the value of the dye patents. Of course, I was not going to ask him. But I want to be frank with your Honor. Your Honor asked me what the situation was and that is the situation.

MR. CHOATE, JR.: He gave the earnings in marks, the total profits in marks for 1913, as 1,367,668 marks.

MR. KRESEL: He was not asked to assign any value for these patents.

MR. ANDERSON: I am perfectly willing to stand on that.

THE COURT: Then the grounds of your objection, apart from his being put upon the stand as an expert and then having been shown to have

a strong and moving and active interest in the outcome of this suit, raise a question of law with which I am not familiar. I am not familiar with the principle you stated a moment ago, that an expert may not have any interest in the suit. As I understood you, such interest, if it appears, disqualifies the witness as an expert and does not go to the weight of his testimony. I am not disputing that principle. I am simply unfamiliar with it either way.

MR. KRESEL: May I make a suggestion, your Honor, that you reserve decision on this motion until we return here for the trial?

THE COURT: Yes, I am going to.

MR. KRESEL: And by that time we will take the liberty of submitting to your Honor some authorities on the proposition.

MR. ANDERSON: That raises a question, if your Honor pleases, if Mr. Kresel has concluded, in connection with various motions that have been made in this case. Counsel in their answer include a motion to dismiss the bill for want of equity. That goes, of course, to the whole case, like a demurrer. We have filed a motion to strike out a considerable part of their defense, which, if stricken out, would have excluded what has gone in today as immaterial and irrelevant, for the reasons stated in the motion.

THE COURT: You mean it would have excluded matters that have gone in today?

MR. ANDERSON: Much of what has gone in today on their cross-examination would have been excluded, in my opinion, if that motion were sustained; because counsel referred in a number of cases to their affirmative defense, and this motion goes to that defense, to strike that out.

There also is a formal motion to amend by

striking a sentence or more out of the bill which is largely a legal conclusion. That is a matter of form.

In addition to the motion to dismiss the bill for want of equity, there is a motion to strike out the charges of conspiracy in the bill.

Those motions, if your Honor please, of course, all go practically to the foundations of this case and certainly they go very largely to the character and scope of the testimony. It would be an enormous waste, and, of course, improvident for us to have to summon a large number of witnesses, or for the defendant to summon a large number of witnesses here to deal with questions which your Honor may conclude to strike out.

Therefore, we moved the Court recently, or rather gave notice of a motion, that we would ask the Court to hear argument on the motions, to call them up and dispose of them a week or ten days possibly in advance of the trial, and in that way so clear the ground as to enable us to summon our witnesses with reference to the disposition of the matter finally and limit the evidence in accordance with your Honor's rulings; and we now renew the motions.

MR. GUTHRIE: It seems to us that these motions ought to be disposed of when the case is opened fully to the Court. It would simply double the labor of the Court and counsel. The answer has been filed now for seven months. The trial will go on in a little over three weeks, and it seems to us that these motions, which it has been candidly stated go to the very fundamentals of the suit, ought to be disposed of after the case is fully opened by both sides in all its aspects.

We are confident that it will be imposing upon

your Honor, as it will be imposing upon counsel, double labor, to come here and interrupt the preparation of this very important case to argue these motions, when we are profoundly convinced that your Honor would not dispose of them until you had considered the whole case.

THE COURT: Your thought, then, Mr. Guthrie, is that at the beginning of the suit, on June 4, after the case is started, that these motions will come on for argument and they need not be followed by a ruling but by the taking of the testimony, and these motions decided and the case decided on its merits, if it reaches that, at the same time; so that all the questions can go up to the Court of Appeals or the Supreme Court, or wherever it may go, with the whole record before it.

MR. GUTHRIE: I think that will be the ultimate result even if we argued the case a week before and divided it up. I think the suggestion involves great duplication of labor and unnecessary labor. Practically everything contained, in our judgment, in our affirmative defenses would have to be gone into in answer to the plaintiff's case.

They charge conspiracy. They charge, by implication, a fraud. It is absolutely necessary to show the situation which made the action of the President of the United States in the public interest. They allege that there was a suppression of facts from the President and from the President's representative, the Assistant Secretary of State. So that, in our judgment, it would be simply duplicating the labor of the Court, as it certainly would be duplicating the labor of counsel.

We are entitled, I think, to urge upon your Honor's consideration that our answer was filed seven months ago, and that this motion should

have been made promptly and not delayed until the eve of the trial.

I think as to the witnesses, the same witnesses will have to be called in any event, so far as we are concerned, if you strike out the part of our affirmative defense regarding the condition of the United States and the facts bearing upon the judgment of the President in authorizing and directing this sale.

As to our defense that it would be inequitable because there cannot be now a complete decision. So far as we are concerned, all the witnesses would have to be called even if this defense should be stricken out.

We are convinced that the same is true of the plaintiff's case unless the bill is going to be fundamentally amended and all charges of fraud, or suppression, of conspiracy, restraint of trade, and conspiracy to deceive the President of the United States are to be eliminated from the bill and the case rest on the simple, naked charge that the patents were sold for less than what the Government conceives to have been their market value.

I therefore submit that the ends of justice and the convenience of Court and counsel would be served by following the course suggested by your Honor; and after there has been a full opening on both sides, if counsel then want to press their motion to strike out any part of their answer, that can be argued; and also your Honor might want us to argue then the motion to dismiss the bill for want of equity. But in this important case it is highly probable that if these motions were argued, you would reserve decision and call upon the parties for their proofs.

THE COURT: I shall not defer the taking of proofs whatever happens, Mr. Guthrie. That is,

whether we hear the arguments before or after, the evidence will go on on June 4th. That is, the suit will begin for the taking of testimony, too, with or without the decision on those motions, immediately on the closing of the arguments, without awaiting a decision; unless a decision is so patent that there is no possibility of error by a decision from the Bench.

MR. KRESEL: That is our understanding.

THE COURT: Because the case has been set for hearing. As to that, I am clear that the taking of the testimony in this case of witnesses must not be deferred.

MR. ANDERSON: I understood that to be the case, sir. But of course, a motion to dismiss a bill for want of equity is a demurrer, and you cannot in ordinary practice go into a hearing on the merits of long weeks of taking evidence, with a demurrer pending undisposed of. It must be disposed of, I think, one way or the other; and while, by agreement, we could go ahead and take the testimony and hear the whole case, we think that these motions and also the motion to strike out, which is practically a motion to limit the evidence in this case—and that is very important because it comes up right at the beginning—should be ruled on. Your Honor will have to rule on it one way or another. Why not rule on it in advance?

I quite agree with distinguished counsel for the defendant that wherever you can consolidate the action and argument, to save time, it should always be done. I should very much prefer it myself, but it seems to me these questions have got to be disposed of preliminarily.

The reason we have not made this motion before is that counsel himself has been out of the

country during practically the entire spring, and illness in the family of one of the other counsel has made it imposible to take any proceeding in the last four months without inconveniencing counsel; and therefore we have waited until counsel could be heard. The case was continued on their motion so that the matter of this discussion could come up. I think these motions should be disposed of, but whatever your Honor rules, of course, will be satisfactory.

THE COURT: My difficulty is this, Colonel Anderson. I agree with you that if there are any motions the decisions of which would limit the evidence, would narrow the issues, of course, it would be well and wise and practicable to have those disposed of beforehand. But it seems to me that we have gotten so near to the trial of the case that, I will assume, I might err in a decision, and suppose I decided to strike it out or not to strike it out, it might prejudice the whole case. Suppose I should strike out some of the affirmative defense and then the case should be heard on the narrowed issues and should go to the Court of Appeals, and the Court of Appeals said there was error in striking out that defense, it would have to come back for re-trial for the taking of that testimony. Suppose I should reach a conclusion that the demurrer is sound.

MR. ANDERSON: I would want your Honor to sustain it at once and we could go right up.

THE COURT: So that I will not set the motions for argument until the fourth day of June. I will hear you that day.

MR. ANDERSON: If your Honor please, I want to make it quite clear that a number of times we wanted to make these motions, but we could not do it in the absence of counsel.

THE COURT: We will hear you on the 4th of June, and we will do the best we can with the motions at that time. If we can decide them offhand, possibly we will.

MR. ANDERSON: The only one that is important is the demurer. I hope your Honor will sustain it, if you think it is good.

THE COURT: Now, then, with respect to Mr. Kresel's motion, may I get you both to help me on this point? How can the testimony with respect to value of patents, when sold to Americans or to American organizations be ascertained by a witness who tells me what the value of these patents would be to a German organization which cannot buy?

If you assume that testimony to be based on a royalty basis, that is one thing. But we are not working on a royalty basis. I am having difficulty in seeing how it is practical to apply this testimony to this situation. I am not asking for argument. I am only asking for you both to help me on that because it seems to me that we are trying to find out about something in this spot, and I am told that a certain condition exists over here, and there is no way to link them up as far as I can see. That is my very serious difficulty, and I will ask you to help me as much as you can on that, because it seems to me that it is not pertinent to the issue here.

MR. ANDERSON: I will, at the proper time, attempt to give you argument on that. I understand your Honor's position as you have indicated it during the trial; and unless I can convince your Honor that the evidence when taken on the record, so that we can examine it, is properly connected with this subject, or sufficiently connected with it to make it at least admissible, why, of course, I

assume that your Honor will strike it out, we will take an exception and the question will be disposed of. I am not going to make an elaborate argument on it.

THE COURT: No. I only called it to your attention here so that in the memorandum that you file on this motion, you will not overlook that particular phase of it.

MR. ANDERSON: That particular question. I understand, sir. Your Honor indicated it this morning.

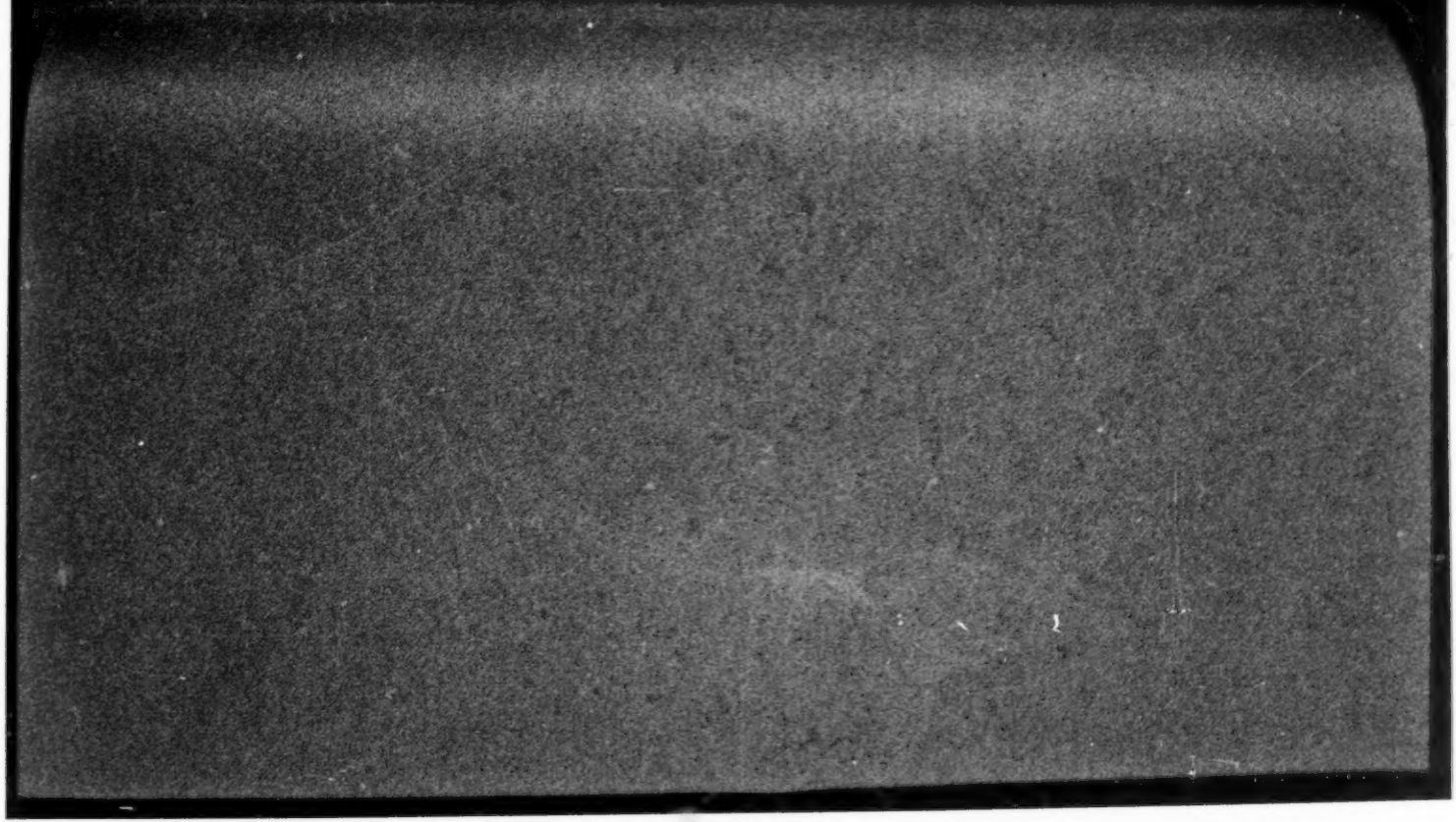
THE COURT: June 4, at what time shall we say?

MR. HERSHKOPF: You said 10 o'clock. Do you mean Eastern Standard time or daylight saving?

MR. MAHAFFY: I think the order fixes 9 o'clock, Eastern Standard time.

THE COURT: Very well, 9 o'clock, Eastern Standard time.

(Whereupon an adjournment was taken until Monday, June 4, 1923, at 9 o'clock, Eastern Standard time.)



A. Yes.

Q. 290. In a case of that sort did you use the funds of the property itself to pay these expenses as they were incurred?

MR. ANDERSON: I will have to object to this examination as leading, sir.

THE COURT: The question is leading in form.

Q. 291. Mr. Palmer, did you have your general appropriation for the payment of expenses in the sale of property?

A. No, no appropriation at all.

MR. KRESEL: I think that is all.

MR. ANDERSON: You can stand aside, Mr. Palmer.

MR. KRESEL: No questions?

MR. ANDERSON: No.

THE WITNESS: Does that mean I am excused?

MR. KRESEL: Is the witness excused?

MR. ANDERSON: As far as I am concerned.

(Witness excused.)

MR. KRESEL: I will call Mr. Garvan.

FRANCIS P. GARVAN.

FRANCIS P. GARVAN, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Did you give your name?

A. Francis P. Garvan.

Q. 2. And your residence?

A. 903 Park Avenue, New York City.

Q. 3. Your occupation?

A. Lawyer.

Q. 4. How long have you been admitted to the Bar?

A. Since 1899.

Q. 5. Have you held any public office?

A. Yes, I was Assistant District Attorney of the County of New York.

Q. 6. From what year to what year?

A. First a Deputy and then an Assistant; I do not know the division; I think from the 1st of January, 1900, to the 1st of January, 1911. That is to the best of my recollection.

Q. 7. Have you held any other public office?

A. I was Alien Property Custodian.

Q. 8. From what date to what date?

A. From March 4, 1919, to March 10th, 11th or 12th, 1921; I am not sure of the exact date.

Q. 9. Prior to your becoming Alien Property Custodian, had you been associated in the work of that office?

A. I had.

Q. 10. In what capacity?

A. As manager of the Bureau of Investigation.

Q. 11. And during what period?

A. From about November, 1917, up to March 4, 1919.

Q. 12. Are you the President of the Chemical Foundation, which is the defendant here?

A. I am.

Q. 13. How long have you held that office?

A. Since the incorporation of the Chemical Foundation.

Q. 14. Do you remember the date of that?

A. It was incorporated February 19, 1919. I think there were the regular incorporators of the Trust Company here in Delaware. How long they held office, for two or three days until the first meeting, I am not positive as to those dates. When I say

the first President, there may have been one of those incorporators who were the employees of the Trust Company here, who were the original people.

Q. 15. Since you have been president of The Chemical Foundation have you received any salary?

A. I have not.

Q. 16. Or any compensation whatsoever?

A. None whatsoever.

MR. ANDERSON: I object to that, if your Honor please. Compensation is a conclusion. If he did not receive any salary, that is a fact. "Compensation" is a very indefinite term. There are many compensations other than money.

THE COURT: That is very broad, is it not?

MR. ANDERSON: It is.

THE COURT: That is the reason, possibly, that Mr. Kresel wanted it.

MR. ANDERSON: It is a conclusion. He can say whether he received any specific thing, but the question of compensation or compensating benefits or compensating results is a conclusion to be drawn from facts and not a question as to which the witness can testify and give his conclusions.

MR. KRESEL: I submit, your Honor, that the question is perfectly proper. It does not call for this witness's conclusion.

THE COURT: Whether the term compensation is used or not, he can say whether he has received anything.

MR. ANDERSON: He can say whether he received any money; he can say whether he received any salary or he can say whether he received any other material or direct benefit, specifying, and he can give the facts; but whether that is compensation or what are the conditions that are compensation is one of the most intangible things and calls for a conclusion.

THE COURT: I think it is open to possibly another construction, Colonel Anderson. If I were asking the question, I should probably use some other term, but it may be that the term used is better than the one I would use. In order that there may be no doubt about it, I will sustain the objection and allow the question to be reframed.

Q. 17. Have you received from the Chemical Foundation any money consideration whatsoever, whether a salary or in any other way?

A. I have not.

Q. 18. Have they paid your expenses as president?

A. They have not.

Q. 19. Have you paid them yourself?

A. I have.

Q. 20. When you used the facilities of the office of The Chemical Foundation, such as to use the telephone for your private affairs, did they pay that?

A. They have not.

Q. 21. Did you pay it?

A. I did.

Q. 22. Have you ever had any stock in The Chemical Foundation?

A. I have not.

Q. 23. Have you ever had any stock in this corporation, directly or indirectly, whether it was registered in your name or in somebody else's name?

A. I have not.

Q. 24. It appears from the minutes of The Chemical Foundation that upon its organization the three representatives whose names were used as incorporators here made subscriptions to, I think, fifteen shares of stock of the company and that when they resigned in favor of the directors of the company, one of those subscriptions was assigned to you in your name for, I

think, thirteen shares of stock. Did you ever exercise that subscription?

A. I think you are wrong. I think it was not a subscription, but a right to subscribe.

Q. 25. Well, right to subscribe then. Did you ever exercise that right?

A. No.

Q. 26. In fact, did you know that that right to subscribe had been assigned to you?

MR. ANDERSON: One moment, Mr. Garvan.

In the examination of this witness, if your Honor please, I would respectfully ask counsel to avoid leading. I do not want to object.

THE COURT: The objection is sustained.

MR. KRESEL: Would your Honor like to have the question re-read? I do not believe it is leading. I asked him whether he asked anybody for the right of the assignment. I do not know of any other way that I can bring out the fact.

THE COURT: Won't you repeat it, Mr. Stenographer.

(Q. 26 repeated as above recorded.)

THE COURT: So far as leading questions are concerned, try to frame the question so that it will not indicate whether the answer expected is yes or no. The form usually has been, "Did you or did you not."

MR. KRESEL: Very well, your Honor. I thank you for the suggestion.

Q. 27. Mr. Garvan, did you or did you not know that that right to subscribe had been assigned in your name?

A. Not until years afterwards.

Q. 28. And when did you discover it?

A. Some time, I think, about a year ago.

Q. 29. Did you ever exercise that right?

A. I did not.

Q. 30. Did you ever have any interest in the business of any of the chemical concerns or pharmaceutical concerns that have been and are the stockholders of The Chemical Foundation?

A. I did not.

Q. 31. Have you now any such interest?

A. I have not.

Q. 32. Were you in any way, either directly or indirectly interested in any subscription to any stock of The Chemical Foundation made in the name of anybody?

A. I was not.

Q. 33. As director of the Bureau of Investigation in the Alien Property Custodian's office where did you make your office principally?

A. At first in Washington; later in New York.

Q. 34. For how long a period did you make your office in Washington, approximately?

A. I think it was about the first six months while the reports were coming in in the largest volume.

Q. 35. And thereafter your principal office was in the City of New York?

A. City of New York.

Q. 36. Please state whether you had in the Bureau of Investigation any other persons who were assisting in that work?

A. Quite a large number.

Q. 37. Could you approximately state the number?

A. They varied so that I do not believe I could. I suppose about eight or nine lawyers and—it would be impossible for me to state that.

Q. 38. Did you in the course of your management of this bureau assign particular lines of work to particular people?

A. I did.

Q. 39. Were you personally active in the investigating work?

A. I was.

Q. 40. I shall try to inquire of you particularly with reference to what, if any, investigation was made by you or under your supervision of German holdings in chemical interests in this country; you understand?

A. Yes, sir.

Q. 41. Did you undertake such an investigation?

A. I did.

Q. 42. And did you take part therein personally?

A. I did.

Q. 43. Who assisted you therein?

A. Mr. Joseph H. Choate, Jr.

Q. 44. Will you please state when Mr. Choate first became connected with the Alien Property Custodian's office?

A. I could not exactly, Mr. Kresel.

Q. 45. Approximately?

A. I should say the early part of 1918.

Q. 46. Was Mr. Choate a volunteer, or was he paid for his services?

A. A volunteer.

Q. 47. What part of the work in the Alien Property Custodian's office did Mr. Choate have charge of?

A. The chemical investigations.

Q. 48. And to your knowledge did Mr. Choate devote all of his time while he was in the Bureau of which you were the head, to that work?

A. He did.

THE COURT: Your questions are taking a leading form again, Mr. Kresel.

MR. KRESEL: I will try to correct that, your Honor.

Q. 49. I wish you would state what information you had derived by you as a result of the investigation into German interests in the chemical industry in the

United States on or about the nineteenth day of February, 1919? I mentioned that date as the date when The Chemical Foundation was incorporated.

MR. ANDERSON: In addition to the general objections reserved to all this evidence, I wish to object to the question as too general and indefinite and one that calls for an answer of such a general and indefinite character that counsel for the plaintiff is not in a position to properly object thereto. Therefore, I think the question should be specific and directed to specific matter.

THE COURT: May I have that question?

(Q. 49 repeated as above recorded.)

MR. ANDERSON: Of course, the specific objection is in addition to the general objection of immateriality and irrelevancy, and so forth, which is reserved to all of this.

THE COURT: The general rule would cover that, of course.

MR. KRESEL: If your Honor desires me to state——

THE COURT: No, I do not, unless you have a desire to do it. My difficulty is this, Colonel Anderson: It goes back to those charges in the Bill again of lack of information. He is asked to say what information he has. The question does allow the witness to cover a broader or narrower field, depending upon the information and knowledge that he has, and so I do not see how I can exclude it in view of the allegation of the Bill. Do you?

MR. ANDERSON: I would not venture to suggest to distinguish counsel for the defendant, if your Honor please, the method of asking his questions. I will, however, be glad to answer your Honor's question. Your Honor will recall that when we began this investigation, during the tes-

timony of Mr. Metz and Colonel Miller, I was compelled to withdraw a number of questions by which I could readily have shortened the investigation, because of their generality and indefiniteness. I recognized his objection was good, and I think in this particular case of the witness now on the stand, who is not only himself a lawyer, but is president of the defendant corporation and was Alien Property Custodian (I do not use the word in any unpleasant sense), to release the witness to make a general speech or statement on the question of the conditions in the United States prior to the war would, if properly followed up, perhaps, with cross-examination, keep us here a week because there is no limit to the wrongs which we feel we suffered from the Germans or the German activities in this country from 1914 to 1916, and therefore, I think if there are any specific facts desired on that subject, the question should be framed in such a way and the foundation laid in such a way, how the information was derived, and so forth, as to enable me to test that evidence without having to go into the history of the war. Therefore, aside from my other objections, I think the question is clearly objectionable on that ground.

Mr. Kresel: I quite recognize, your Honor, and I recall very clearly that Colonel Anderson did have to reframe general questions that he put to Mr. Metz, but the cases are not at all similar. Mr. Metz was not charged with anything in this case by the Bill of Complaint of the plaintiff. His motives are not here in question, except as they were developed upon cross-examination. It is not charged that he was induced by conspirators to take an official action which it is now claimed was unlawful and I do not desire only certain specific

facts that this gentleman had before him when he took his official action, but I want him to state to the Court all information that he had which is material here, so that the Court may determine whether his motives were or were not proper. We are entitled to it under the terms and the allegations of this Bill. They can not, on one hand, charge us with having violated the law—though fraud in fact is denied, they still claim it is at least fraud in law—they cannot make that charge against us and then stop us from showing upon what information we were acting. That is our position.

THE COURT: We will now take a ten-minute recess. At its conclusion, Colonel Anderson, I shall appreciate it very much if you will cite to me the objections to the questions put to Colonel Metz and to Colonel Miller which were overruled by the Court, which will establish a precedent for the ruling in this case.

(A short recess was then taken by direction of the Court.)

MR. ANDERSON: In the few moments during recess I have only been able to look at a very small portion of the direct testimony of Mr. Metz and did not at all refer to the re-direct, where the controversy was greatest. At page 1753 of the record the question is asked: "Q. 55. I will ask you to take these licenses which you have identified, both the original issue and the subsequent issue, and state what you did under those licenses of the Federal Trade Commission and each of them?

"MR. KRESEL: I have to object to such an indefinite question."

There was some discussion, and then I said:

"I will ask him a specific question, if your Honor please, but if I should ask him a specific question, from my experience, I am afraid counsel will object. I therefore ask him to state what he did."

Mr. Kresel on the next page, 1754——

THE COURT: You are going now ahead of the ruling.

MR. ANDERSON: I have not yet come to the ruling. Mr. Kresel on the next page says:

"Of course, Colonel, if that is the purpose, I have no objection. I do not want to hamper you by keeping you down to any particular frame of question, but I simply wanted to be sure that we were not giving Mr. Metz the entire field; that is all."

That is exactly my objection here.

"MR. ANDERSON: No, all I wanted Mr. Metz to do was to say what he did under these licenses."

Then I further stated: "Whether he operated under them has been suggested is a conclusion. So I asked him what he did." Mr. Kresel says: "I have no objection to putting the question in that form." The Court says: "You say you have no objection. Does that go to substance as well as form?"

MR. KRESEL: So that disposed of that. There was no ruling of the Court on that.

MR. ANDERSON: No ruling by the Court on it, but I had to reframe it twice.

THE COURT: Does the record sustain that conclusion, sir?

MR. ANDERSON: I think so, sir. I stated the question twice.

THE COURT: Very well.

MR. ANDERSON: Then the statement which I

read, by Mr. Kresel, was that his purpose was to prevent giving Mr. Metz the whole field, which is exactly what is in my mind now, and I reframed it then in order to limit it.

On page 1767:

"Q. 126. When you got those products in the United States, what did you do with them?

"A. Sold them to the——

"MR. KRESEL: One minute, please. I have no objections—he sold them."

Then the witness went on to say, "Sold them in the regular course of business to the Government; sold to the Government, to hospitals and to physicians."

At page 1768, on the same subject of sales, the witness was asked, did it extend throughout the United States, and his answer was "Throughout the United States and I exported to Germany within the last month or two 160,000 ampules.

"MR. KRESEL: I ask that that part be stricken out.

"THE COURT: Let the answer be stricken out and the question repeated."

THE COURT: You do not contend that that ruling has anything to do with the form of the question?

MR. ANDERSON: I do contend that the ruling was an express limitation to a specific question and a specific answer, which is all I ask for here. I am not making the objection in this case to the specific form of the question. My objection is to the opening up of an unlimited discussion on the subject.

THE COURT: Won't you read me then once more, please, what you have just read about the

question found on page 1767, because if I understood you correctly, Colonel Anderson, the ruling there was that when the witness had answered the question, he must stop.

MR. ANDERSON: Yes, sir. May I suggest this to your Honor. If you put the question in an indefinite form so that the witness can make any statement under it that he chooses, you cannot stop him because anything he may say is responsive to the question.

THE COURT: That may be sound reasoning or not, that I will not pass on. What I wanted to get and what I wanted to get you to get—and I will take another recess if you desire it and at such length as you desire and await your notifying me that you are ready, to find a ruling in connection with the testimony of Colonel Miller or Colonel Metz which will serve as a precedent and warrant a ruling in your favor on the question now before the Court. That is the thing that I want to get.

MR. ANDERSON: Yes, sir. I want to come to that. Mr. Metz's testimony is hundreds of pages long and I have been able to go through very few.

THE COURT: I will wait for you when we will take an adjournment.

MR. ANDERSON: If your Honor will permit me, I only wish to point out a few of these questions. I do not want to point them all out.

At page 2114, in Colonel Miller's testimony:

"Had you any personal knowledge of the character of the corporation known as The Chemical Foundation, Incorporated?

"MR. KRESEL: Pardon me a minute. I object to that question as being indefinite. I do not know what is meant by 'the character of the Chemical Foundation.'

"THE COURT: I think your objection is well taken.

"MR. ANDELSON: I will withdraw the question. I was trying to shorten it."

Next question:

"Will you state all the facts within your own knowledge as to your execution of that order for the assignment of the patents mentioned therein, which are commonly called the Norma Company of America?

"MR. KRESEL: I am sorry, Colonel Anderson. But I must object to the indefinite character of that question. This is direct examination.

"THE COURT: I think the objection is well taken."

Then I said, "Colonel Miller has got to leave on a train at 10:50 and I am trying to shorten it. Of course, if there is an objection, I withdraw the question."

Your Honor had already ruled and the withdrawal was unnecessary. At page 2120;

"Q. 33. As to the one of the fifth day of November, 1921, which is in evidence, which undertakes to confirm certain sales theretofore made of patents, trademarks, etc.; do you know how this matter first came to your attention?

"A. It came in the usual routine way.

"MR. KRESEL: Please answer just yes or no.

"A. Why, I know, yes.

"Q. 34. Please state how it came to you and by whom it was brought to your attention?

"MR. KRESEL: I do not object to the question in so far as it asks by whom it was brought to his attention. I do object to the question as to how it came to his attention, as being too indefinite.

"THE WITNESS: Can I tell the individual?

"THE COURT: Just a minute, Colonel.

"Will you divide your question then, Colonel Anderson, or do you press it as it stands?"

Then I said, "It will probably simplify it if I divide it, so as to save time."

Then I go on and divide the question into two questions and ask the specific questions. Down lower on page 2121:

"Do you recall what, if anything, was stated to you at the time you signed or authorized this order?

"A. I directed it——

"MR. KRESEL: Pardon me a moment. Do you mean authorized or signed?"

I withdrew the word "authorized" and asked the following question:

"At the time you signed this order or when it was brought to you?

"A. This order came to me——

"MR. KRESEL: Please answer yes or no.

"A. State that question again, please."

The question was repeated and the answer was, "Yes, I recall it."

"Can you please state what was said to you on the subject by Mr. Zimmerman?

"MR. KRESEL: I object to the question upon the ground that the defendant cannot be bound by any conversations," and so forth.

On page 2122:

"Please answer the question, Colonel Miller?

"A. I had given instructions to have these records brought up to date, it really being a routine arrangement, in order to clear the titles and to enable American users of these trademarks to obtain them from The Chemical Foundation properly.

"MR. KRESEL: Just a minute, please. I did not interrupt Colonel Miller because I felt that perhaps he would get on to the conversation. He had been asked about a conversation. The answer up to the present has not stated a word about the conversation.

"THE COURT: Let the answer be stricken out and the question repeated.

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"Q. 40. What were the representations made to you as to the situation that brought about this order?

"MR. KRESEL: I object to the question in that form.

"THE COURT: The objection is sustained. Let the prior question be repeated, unless it is withdrawn, Colonel Anderson."

I submit, if your Honor please, just running through those questions, that the statement which I made, that we were held to a very strict direct examination—as to which I am not complaining in the slightest; do not understand that I am complaining and I only refer to it to state what I understood to be the rule under which this examination was proceeding—is a fair statement. I objected during Mr. Palmer's examination on the same ground; and as we are evidently in for a long examination of this witness, he being president of the defendant corporation, I felt and now feel and submit to the Court for its ruling, to which I, of course, will immediately bow, that this witness should not be asked general questions which would open up a whole field of inquiry and discussion and allow him—and I do not mean to suggest that the witness will abuse that privilege—to make a general speech — I am not using it in any offensive form—on the subject of the relations of the Germans and the United States.

Of course, we claim that all this is immaterial and I think for that reason this question is clearly an objectionable question. I have pointed out such cases as your Honor referred to. If I am mistaken as to your Honor's ruling, then I am perfectly willing to accept any ruling that your Honor may make.

But even if your Honor thinks that in the exer-

cise of your discretion this should be allowed, I merely make the point on the record and let it go ahead, of course, without further discussion. But at this time I want to make that observation.

THE COURT: In the first place, I think the rulings cited by you are not precedents for the ruling now asked by you. Nevertheless, I am going to sustain your contention in this respect, although I have grave doubts indeed as to its being well founded or well taken. You may take such action in view of the ruling as you desire, Mr. Kresel.

MR. KRESEL: If your Honor please, may I ask the Court's indulgence to adjourn a little earlier today?

THE COURT: At this time?

MR. KRESEL: If that is not putting your Honor to any trouble. I want to take the three o'clock train. I live far away from home and always go home on Fridays. Is there any objection?

MR. ANDERSON: Entirely agreeable to me, sir? Any arrangement convenient to Mr. Kresel is convenient to me.

THE COURT: This case is suspended until 8:30 Monday morning. We will have no session on the Fourth of July, nor on Saturday, nor on the following Monday, July 9th. There is a patent case set for argument on that day.

(Whereupon at 2:30 o'clock P. M. Standard time, an adjournment was taken until Monday, July 2, 1923, at 8:30 o'clock A. M., Standard time.)

NINETEENTH DAY.

Wilmington, Delaware, July 2nd, 1923, at 8:30 o'clock a. m. Standard Time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

TRIAL RESUMED BEFORE THE COURT.

FRANCIS P. GARVAN resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. KRESEL:

Q. 50. Mr. Garvan, did or did not the Bureau of Investigation of which you were the director, conduct an inquiry into the nature and extent of enemy-holdings in the organic chemical industry of the United States and the relation thereto of United States patents issued to Germans?

A. It did.

Q. 51. Will you briefly indicate how that investigation was conducted and the sources of information that came to you?

A. In the first place, we went through the Bayer Company, which was the largest of the agencies here, in respect to the property which it had on this side of the water. We searched through their files and records and their correspondence with Germany and correspondence with the other representatives of the German industries here. We went through all of the Big Six representatives in the same way.

We went through all that the Military Intelligence, the Naval Intelligence, the Department of Justice, the Secret Service, the War Trade Board, and several other agencies of the Government who were working on confidential information at that time, had.

We searched the literature of the subject which was very extensive, both in England and France and here, particularly in England, where Lord Moulton had published several articles, and who was the biggest patent lawyer in England, and was also in control of the production of munitions on behalf of England throughout the war and was knighted for that. He was a great source of our information.

We received information from the British Intelligence and from the French Intelligence; from British Who's Who, which was a publication of enormous extent, which gave the history of every one connected with international trade in Germany.

We had access to the cablegrams which passed between here and abroad, both through the diplomatic corps, both through Bernstorff and his home office, and through the agents here of the Cartel. Those cables were seized by the Navy when they took over the Sayville plant.

We talked with every one whom we could hope to have any knowledge on the subject. Agents here, the German agents, were submitted to examination and their clerks and employees, leading physicians, leading chemists, professors in colleges who had studied in Germany.

That in general shows the scope of the investigation.

Q. 52. About when did you begin this inquiry?

A. Almost immediately upon being appointed; at least by the Ist of January or February of 1918, because I think one of the first companies we investigated of any kind was the Bayer Company. One other source of information which I forgot was the propaganda centers. The propaganda societies of the Germans were taken possession of by the Government and their libraries of propaganda were taken over by

us and gone through and all the correspondence in connection with those.

MR. ANDERSON: I assume that it is unnecessary for me to renew the general objections. They are considered as being made, if your Honor please?

THE COURT: I understand that all objections other than objections of form are made to this and every question asked by the defense, not only of this witness but of all other witnesses, in the same way that the defendant's objections were understood to lie to each and every question asked by you.

MR. KRESEL: Yes, your Honor.

Q. 53. Mr. Garvan, have you prepared a list of books and papers that were used in that investigation?

A. A partial list.

Q. 54. Have you it before you?

A. Yes.

Q. 55. I am going to let you refresh your recollection.

A. This, of course, does not include all.

Q. 56. I understand. Just state the first source of information that you went to?

A. By date, one of the earliest sources of information was a book translated and made part of a Senate document, a book translated on the resolution of Senator Aldrich. It was called "The Great German Banks and their Concentration in Connection with the Economic Development of Germany." That was a Senate document of the Sixty-First Congress and was translated from the German in order to be printed as a Senate document.

MR. KRESEL: Of course, I do not want to burden the record with an immense book like this, but I should like to have it appear on the record,

that this book called "The German Great Banks and their Concentration—National Monetary Commission," which is document 593 of the Sixty-first Congress, Second Session, may be referred to by either side upon the argument.

THE COURT: Is it so understood, Colonel Anderson?

MR. ANDERSON: It is a large order, if your Honor please. I have never seen the book, but I——

MR. KRESEL: That is the reason I am not asking that it be marked in evidence.

MR. ANDERSON: I am just thinking what I am letting into the record. Subject to the general objections I shall agree that either side may refer to that as a public document. I am not going to object to it particularly.

THE COURT: In this or in the Appellate Court they may refer to it?

MR. ANDERSON: Yes.

MR. KRESEL: Thank you. I read one paragraph from page 724 of this book:

"It is self-evident that this development has not reached its final goal."

The author is discussing the development of the chemical industry in Germany.

"There is even now an agreement between the Badische Anilin-und Sodafabrik and the Hochst Dye Works by which they act in common in fixing the selling price of artificial indigo manufactured by both. It is quite likely that the Hochst-Cassella-Kalle and Co. combination and the other triple alliance (Badische Anilin Fabrik, Bayer, and the Aktiengesellschaft fur Anilin Fabrikation) will gradually get together in one way or another and at some more or less distant future time form a consolidation of all aniline dye works or some looser union."

May this be marked, then, simply for identification. I think that would be a better way.

THE COURT: I was just wondering whether it would not keep our record in better form if it were made an exhibit as you have made each of the other documents that you have attempted to mark for use, because eventually one side or the other has put it in——

MR. KRESEL: Yes.

THE COURT: And eventually that could be put of record and marked as an exhibit in the case, with the understanding that it should not be re-printed with the record.

MR. KRESEL: That is agreeable. Is that agreeable to you, Colonel?

MR. ANDERSON: Subject to the general and specific objections heretofore made to this evidence, which we regard as entirely outside the case, I would have no objection to having that marked as an exhibit, and we will stipulate at this time that it shall not be printed in the record, and that either party may use it as argument, as agreed.

THE COURT: I wondered whether that was your real purpose with reference to Defendant's Exhibit No. 30, which was Mr. Palmer's report.

MR. ANDERSON: I think Defendant's Exhibit 30 contains so much information that both sides have referred to, although quite an extensive task it would be better to print—unless there is some index or something of that kind which might be left out.

MR. KRESEL: Of course I agree to that. The chemical section has got to be printed, and I think you wanted the first section printed.

MR. ANDERSON: The first section printed, yes.

MR. KRESEL: There are some sections that perhaps you and I may agree upon later.

MR. ANDERSON: It may be that we can strike out formal parts or things of that sort. We will do that with great pleasure if we can.

Book received in evidence and marked "Defendant's Exhibit No. 48." (*Not printed.*)

Q. 57. Mr. Garvan, will you mention the next document which you had before you in this investigation?

A. "Germany's Commercial Grip on the World—Her Business Methods Explained," by Henri Hauser, who was a French economist, which was originally published in the French in 1915, afterwards translated and published in England, and copies of which I have brought over here and circulated here.

MR. KRESEL: I offer this book in evidence, and am willing to stipulate as to that the same as we stipulated about the preceding exhibit.

MR. ANDERSON: If your Honor please, as to that book, if it is offered in evidence purely and solely for the purpose of showing that Mr. Garvan had this book available as a source of information, for what it might have been worth to him, then I would make only the general objections which we are carrying upon the record such as we make to that type of evidence.

But if it is offered in evidence as proof of the facts contained therein, or of any fact contained therein as an existing fact, then I would be constrained to object, because it is not in the same position as the other book, which is an official publication of the United States, but is merely a publication by a French author of whose knowledge and information I know nothing, and of course it is not evidence in this case.

With that understanding, I want to make a

specific objection to the admission of the book or any part thereof as evidence in this case.

MR. KRESEL: I think Colonel Anderson's distinction is well taken, and while I recognize that a book of this sort has not the same probative force as the official report which went in in the preceding exhibit, I do not quite agree that its only value is to show that Mr. Garvan had that before him.

As your Honor well stated on Friday, Executive officers, administrative officers, must act upon information that is before them, without waiting for judicial determination as to facts or law. And I think that this piece of evidence, as well as others that I am about to offer, is entitled to more than the value of showing that it was information that Mr. Garvan had before him. It is not only information that he had before him, but information that he acted upon, information that he was entitled to act upon.

With that statement, I am offering that in evidence and am willing to stipulate as to that the same as I did as to the preceding exhibit, namely, that while it is marked in evidence, it may be referred to by both sides but need not be printed in full.

THE COURT: Mr. Kresel, may I ask now whether it is your purpose at some time to ask what the facts were, as proved by someone who knew the facts apart from sources of information of that character, about the German dye and chemical situation in this country.

MR. KRESEL: Your Honor, we already have in evidence the chemical section of Mr. Palmer's report, which states the facts, and which, being an official report, your Honor will see is probative of the facts; but we are not going to stop there.

We shall produce evidence to show what the present status of the industry is since the war.

THE COURT: I was thinking of the status at the time of the seizure rather than now. I am wondering whether in the category referred to by the witness there were included encyclopedias, dictionaries and things of that sort.

MR. KRESEL: The basis upon which we offer this, your Honor, is that here was a publication which was available to the Government upon a subject that the Government was investigating. It contained certain information. That information together with other information was what the Government in this instance acted upon. We are trying to show what that information was.

THE COURT: That is a question of some moment. There has been no similar question in my experience and I doubt whether the question is not entirely new. Consequently, Colonel Anderson, the only thing that I can do is to admit it subject to such objections as you have made and determine eventually the value it has, if any, if it becomes necessary to consider this book at all.

MR. ANDERSON: Your Honor please, I recognize your Honor's position and difficulties and in order to make my position clear, in view of the suggestion of counsel as to a stipulation, I will just state it specifically that your Honor may rule. We object to the introduction or other use of the book in question as evidence in this case or in connection with this case upon the following grounds:

(1) Upon the general and specific grounds which have already been set forth in the record in the opening statements and discussion of counsel which are reserved as to all questions, by agreement.

THE COURT: On both sides.

MR. ANDERSON: On both sides.

(2) On the specific ground that this evidence is entirely immaterial for reasons which are obvious and may not be applicable to much other evidence objected to on that ground.

(3) On the ground that it is not an official document of the Government of the United States and is not competent or admissible as evidence in any case in the courts of the United States as proof of any facts contained therein.

To make that clear, the full extent to which the witness could go would be to say that among other sources of information he had certain books and publications. There was available to the witness the entire chemical library of Congress and we could not put all that in evidence. Therefore, I object to this evidence, even for the purpose for which it is offered, as showing or tending to show that there was any information contained in this book available to the witness when he was discharging the duties to which he refers, for the reason that it does not appear and cannot be made to appear, except by direct testimony, that the information contained in that book is information at all. I have never seen the book, but proof must be submitted that those are facts, and facts are the sole basis of action.

Therefore, I want to make my objections to this book as specific as possible; and without repeating them as to other similar books, I will refer to these objections as covering the ground of my objection to those books.

THE COURT: Your last statement, I assume, would really come under the hearsay rule.

MR. ANDERSON: Yes, of course. I did not ex-

plain in detail because it is perfectly obvious what it refers to.

THE COURT: It is admitted subject to the plaintiff's objection.

MR. ANDERSON: I might add that if the book is admitted in evidence, I am willing to stipulate with counsel that it shall not be printed in the record and that either side may refer to it as if printed, but without waiving any objections to its admissibility.

Received in evidence and marked "Defendant's Exhibit No. 49." (*Not printed.*)

Q. 58. Mr. Garvan, will you give me the next piece of literature that you had before you?

A. "Science and the Nation," a series of essays by the Professors of Cambridge University, England, with an introduction by Lord Moulton.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: Same objection, if your Honor please, general and specific, as made to the preceding exhibit.

THE COURT: I understand that all documents of the character of the preceding one are all admitted subject to the same objection.

Received in evidence and marked "Defendant's Exhibit No. 50." (*Not printed.*)

Q. 59. And the next one?

A. "Report on Dyestuffs for American Textile and other Industries," by Thomas H. Norton, Commercial Agent of the Department of Commerce.

MR. KRESEL: We offer that in evidence. It is an official report and we offer it not only as a basis of information but as proof of the facts therein contained.

THE COURT: Admitted under the same conditions as Exhibit 48.

Received in evidence and marked "Defendant's Exhibit No. 51." (*Not printed.*)

MR. KRESEL: I call attention in connection with this exhibit to the fact that it appears therefrom that it is a report which was made pursuant to a resolution of the Senate under date of January 26, 1915.

MR. ANDERSON: Your Honor will understand, of course, that even as to that report, a report of that particular character, we reserve the question as to whether it is proof of the facts contained in it, because we have not had a chance to examine it and we do not know anything about the report. It may be that when we come to argue, we will admit that it is proof of facts, but we will reserve the question.

THE COURT: All questions are reserved for argument.

MR. ANDERSON: I want to reserve it. I do not want to waive that question.

MR. KRESEL: I do not think, your Honor, that the Government is in any position in this case to question the rule that this report and other similar official reports are proof of the facts therein contained.

Again I remind your Honor and counsel that that was the position taken by Colonel Anderson here with reference to a report of the Federal Trade Commission, from which he read a portion; and I was careful at that time to inquire whether that was being offered upon the theory that such an official report was proof of the facts. Colonel Anderson stated that it was, and that is the law. There is no question about that. Therefore, I say that it is not a question of reserving anything. It is in.

MR. ANDERSON: Possibly that is true, but I

want to reserve the right to argue as to certain specific reports to the contrary. I do not admit they all come in the same class.

Q. 60. Mr. Garvan, what is the next one?

A. "Preliminary Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, of the Alien Property Custodian's staff, which was introduced in the hearings of the House, at pages 658 to 678.

MR. ANDERSON: May I ask if you have that report?

MR. KRESEL: Yes, it is printed right here.

MR. ANDERSON: I mean the original, because if you have the original, I would like to see it.

MR. KRESEL: I do not know where the original is. It is probably in the A. P. C.'s office.

MR. ANDERSON: We cannot find it.

MR. KRESEL: But it is one of the exhibits that is printed in the minutes of the hearing before the Committee on Ways and Means, and in accordance with our stipulation we have a right to use the secondary evidence.

I therefore offer in evidence the "Preliminary Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, which is printed at pages 658 to 678 of this Hearing before the Committee on Ways and Means on H. R. 2706.

If it is agreable to your Honor and Colonel Anderson, we will mark this and I may have the right to substitute a typewritten copy of that. I will have a copy drawn up.

THE COURT: Mr. Kresel, do you offer that as proof of the facts, as you did exhibits 48 and 51, or do you offer it as you did the French document?

MR. KRESEL: I offer that as proof of the facts, your Honor. It is an official report.

MR. ANDERSON: I not only make the objections heretofore made, but reserve the objection that this particular report is not proof of the facts and cannot be so received.

MR. KRESEL: When we come to argue the case before your Honor, we may argue that also.

MR. ANDERSON: May I state my position so that Mr. Kresel may understand it. That is a report, as I understand it, by a public accountant, just a report to his employer, say Mr. Garvan——

MR. KRESEL: No, not Mr. Garvan.

MR. ANDERSON: Well, whoever it was.

MR. KRESEL: The Alien Property Custodian.

MR. ANDERSON: The Alien Property Custodian; same thing. That public accountant is available to testify, presumably, and certainly he can be called, and while it might show, assuming it to be evidence at all in this case, that Mr. Garvan had that report before him or available at that time, whatever that report contained, I respectfully contend that it is not proof of any fact contained therein, because better evidence is available in the person of the man himself who drew the report. The only point I waive as to that report is the production of the original signed copy.

MR. KRESEL: I do not need to argue that at the present time.

THE COURT: Admitted, subject to the objections.

Received in evidence and marked "Defendant's Exhibit No. 52." (*See Exhibits, Vol. IV, page 2323.*)

MR. KRESEL: I also offer in evidence the "Supplementary and Final Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, which is printed in the same volume of

proceedings before the Committee on Ways and Means at page 678 and 679.

MR. ANDERSON: The same objections, if your Honor pleases.

THE COURT: Admitted subject to the objections.

Received in evidence and marked "Defendant's Exhibit No. 53." (*See Exhibits, Vol. IV, page 2379.*)

Q. 61. Mr. Garvan, will you give me the next document?

A. "Report on Kuttroff, Pickhardt & Company, Incorporated," by Lee J. Wolfe, of the Alien Property Custodian's staff, House Hearings 2706, pages 679 to 692. Kuttroff, Pickhardt & Company were the agents of the Badische Company,

Q. 62. In the United States?

A. Yes.

MR. KRESEL: I offer in evidence the report on Kuttroff, Pickhardt & Company, Inc., dated January 11, 1919, made by Mr. Wolfe of the A. P. C. staff.

MR. ANDERSON: Same objection, of course, as made to the preceding exhibit.

THE COURT: Admitted, subject to the objection.

Received in evidence and marked "Defendant's Exhibit No. 54." (*See Exhibits, Vol. IV, page 2382.*)

MR. ANDERSON: I would like to ask Mr. Garvan if he has a copy or original of that complete report, or any of these complete reports, for the reason that I would like to check the question of whether they are complete in their publication. Have you any of those reports? I do not want to interrupt examination.

MR. KRESEL: We have not. At least, I do not know of any.

THE WITNESS: Not that I know of. Wolfe can give you a copy.

MR. KRESEL: If there is any question about it, Colonel Anderson, I will communicate with Mr. Wolfe and see if he has copies in his office, and if he has, we will produce them.

MR. ANDERSON: I would very much like to have them, because I do not know anything about them.

THE COURT: You may discuss that with counsel.

MR. ANDERSON: Yes, sir.

THE WITNESS: Wolfe must have his original working papers, any way. They always keep them.

Q. 63. Now, what is the next one, Mr. Garvan?

A. Letter of Hauser, who was head of the Hoechst concern in Germany, to Mr. Metz's firm in America, who were their agents here, dated September 20th, 1909, House Resolution 8078, page 513.

MR. KRESEL: I offer in evidence a letter from the Hoechst Company signed by Hauser, which is printed at page 513 of the Hearings before the Committee on Finance of the United States Senate on H. R. 8078.

MR. ANDERSON: Same objection, sir.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 55." (*See Exhibits, Vol. IV, page 2418.*)

MR. ANDERSON: Of course, I might add that a letter from Dr. Hauser to Mr. Metz certainly could not have any relation to the Government of the United States.

I understand your Honor's ruling and I merely want to show that on the record.

Q. 64. Mr. Garvan, Nos. 9, 10 and 11 are in, so you need not mention those, they are already in evidence. What is your next one?

A. Letter of the Badische Company of Germany to Kuttroff, Pickhardt, dated September 3, 1913, House Resolution 8078, Page 514.

MR. KRESEL: I offer in evidence a letter from the Farbwerke-Hoechst Company, dated September 3, 1913, printed at pages 514 and 515 of the hearing before the Committee on Finance of the United States Senate.

THE COURT: Admitted.

MR. ANDERSON: Pages 514 to 515?

MR. KRESEL: Yes.

THE WITNESS: It is there printed by "Hoescht." I think there is a mistake there.

MR. KRESEL: Yes. I have it here at page 514 (indicating to counsel).

Received in evidence and marked "Defendant's Exhibit No. 56." (*See Exhibits, Vol. IV, page 2421.*)

Q. 65. What is the next one, Mr. Garvan?

A. Letter to Hauser to Metz, dated July 31, 1913.

Q. 66. That is already in; and so is 14 and 15. What is the next one?

A. Letter Hoechst to Metz, dated June 8, 1914.

MR. KRESEL: I offer in evidence letter from the Hoechst Company to Metz, printed at page 516 of this volume, "Hearings before the Committee on Finance."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 57." (*See Exhibits, Vol. IV, page 2423.*)

MR. ANDERSON: Without repeating the specific objection——

THE COURT: The same objection to all of them, Colonel Anderson, will be considered as made by you.

MR. ANDERSON: Yes, sir.

Q. 67. What is the next one?

A. Letter from the Badische Company to Kuttroff, Pickhardt, dated June 13, 1914, page 515.

MR. KRESEL: I offer in evidence letter from the Badische Company to Kuttroff, Pickhardt & Co., dated June 13, 1914, printed at page 515 of the Hearings before the Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 58." (See *Exhibits, Vol. IV, page 2424.*)

Q. 68. What is the next one?

A. Two telegrams from the Badische to Kuttroff-Pickhardt, one dealing with the tariff and the other with order not to sell, Senate Hearings, page 253. I think that is Senate Resolution 77. I think that is the Shortridge hearing. That is in the Shortridge hearing.

Q. 69. Page 253?

A. Yes, sir, 253 and 256. They appear at page 76 of the Shortridge testimony.

MR. KRESEL: It is page 253. I offer in evidence the two telegrams from the Badische Company to Adolph Kuttroff, both of them being printed at page 253 of the Hearings before subcommittee of the Committee on Judiciary. I ask that each of them be marked separately.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibits 59 and 60." (*See Exhibits, Vol. IV, page 2426.*)

Q. 70. What is the next one, Mr. Garvan?

A. Albert's letter of introduction to H. A. Metz.

MR. ANDERSON: I would like to see that letter.

MR. KRESEL: I have it here. It is page 494 of the Senate Hearings.

MR. ANDERSON: If your Honor please, I object to the introduction of that letter on the same ground that I urged on the cross-examination of Mr. Metz. It is a letter appearing to be addressed to "My dear Benefactors and Friends" and signed "Albert". Immediately following it in the Hearings before the Senate appears the following:

"Senator Watson. Do you know whether or not that letter was ever brought to the attention of Mr. Metz?" Mr. Garvan was being examined here. "Mr. Garvan: He carried it with him. Mr. Metz. Just want to say that I never saw such a letter, and if I carried it the contents were not known to me personally. I carried dozens of letters.

"Mr. Garvan. This letter was a letter which Mr. Metz carried with him. He probably never read it.

"Mr. Metz. I never saw a letter like that. Senator Watson. Did it not state that Mr. Metz would appear with a letter of introduction? Mr. Garvan. There were a half dozen letters"——

THE COURT: That is the same letter, Colonel Anderson——

MR. ANDERSON: The same letter that your Honor struck out on the cross-examination.

THE COURT: Yes.

MR. ANDERSON: I object to the letter, it being purely a personal letter between Dr. Albert, or whoever was the signer—it is just "Albert"—and his friends and benefactors, whoever they

were. I do not know anything about it. Certainly it cannot be evidence in this case.

MR. KRESEL: But this is a different situation entirely. Of course, with Colonel Metz it was not admissible, because I did not show and could not show he had knowledge of it. Now it is admissible upon the ground that that was a piece of information before Mr. Garvan—an entirely different situation.

THE COURT: As I understand, Colonel Anderson, that letter is not now offered in any sense as an impeachment of the witness Colonel Metz, but is offered for the same purposes as the other documents offered this morning, and the same ruling will be made.

Received in evidence and marked "Defendant's Exhibit No. 61." (*See Exhibits, Vol. IV, page 2426.*)

Q. 71. What is the next one?

A. Letter of Metz to Secretary of State Bryan.

Q. 72. That is already in evidence.

A. Telegram Ambassador Bernstorff to the German Foreign Office.

MR. KRESEL: I offer in evidence telegram signed Bernstorff, dated March 13, 1915, printed at page 491 of the Hearings of the Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 62." (*See Exhibits, Vol. IV, page 2427.*)

Q. 73. What is the next one, Mr. Garvan?

A. Telegram Charles Suchard to Millington Behren, Nine Berlin, April 17, 1915, House Hearings page 256 and Senate Hearings page 491.

MR. KRESEL: I offer in evidence the telegram signed Charles Suchard, dated April 17, 1915,

printed at page 491 of the Hearings before the Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 63." (*See Exhibits, Vol. IV, page 2428.*)

Q. 74. What is the next one?

A. Letter of Dr. Albert to Hossenfelder, dated April 19, 1915, House Resolution, page 492.

MR. KRESEL: I offer in evidence a letter from Dr. Albert to Mr. Hossenfelder, dated April 19, 1915, printed at page 492 of the Hearings before the Senate Committee on Finance.

THE WITNESS: Hossenfelder was the German Consul General.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 64." (*See Exhibits, Vol. IV, page 2428.*)

Q. 75. What is the next one?

A. The next one is an editorial in the New York World, April 28, 1915, House Resolution 8078, Senate Hearings page 492.

Q. 76. While you are on that, what is the next document, so as to connect that up?

A. Letter of Boy-Ed to Albert — Naval Attache Boy-Ed of the German Embassy.

Q. 77. Does that refer to this editorial of which you have just spoken?

A. Yes, sir. Well, there is another one.

MR. ANDERSON: If your Honor please, I do not object to this evidence because I do not suppose any court in Christendom would pay the slightest attention to it, and therefore we are only burdening the record. Certainly it is a novel experience so far as my limited practice of the law goes to put into evidence correspondence of this

kind, editorials from newspapers, libraries on subjects upon which I suppose there are 20,000 books, and if they can put in evidence three or four or a hundred, we can put in an equal number on the other side. It would make the administration of justice impossible if this thing goes on.

MR. KRESEL: I did not comment on the things that Colonel Anderson put in, as to which I might have made even more pointed remarks. But we are not here to discuss that. It is for your Honor to say whether this is admissible or no. I doubt whether Colonel Anderson ought to state that no court in Christendom would pay any attention to evidence which your Honor has already been admitting.

MR. ANDERSON: It was admitted without a ruling.

MR. KRESEL: It has not been admitted without a ruling. We offer this evidence, if your Honor please, not only believing that it is admissible but that it is material and relevant; that when the motives of these officials are attacked and they are charged with having been duped by conspirators, we have a right to show what information they had upon which they acted, whether that information was contained in editorials or books or records or examinations or letter or what not. They cannot stop us from showing that. That is the justification that we are entitled to show in this Court.

THE COURT: And then as a consequence of that the burden would be on the Government to show that the information upon which they acted was erroneous?

MR. KRESEL: No, your Honor, I do not claim that. I claim that it would then be for the Court to say, if there is no proof to the contrary offered

by the Government, whether that was such information, assuming now that the general question that we have been urging, that the Court cannot inquire at all——

THE COURT: I understand.

MR. KRESEL: Assuming that that has passed by, then the Court may say whether that information and all the other proof in the case makes out such a case as justified the action by these officials.

THE COURT: Assume for a moment, if you will, please, that there did exist a power; that is, that the Trading with the Enemy Act conferred a power upon persons, we will say, in the Executive Department, to make a bona fide sale, either in public or, under the authority of the President, a private sale. Then from your point of view would such a sale if made be invalid if brought about by a conspiracy such as has been alleged in the bill of complaint?

MR. KRESEL: I think, your Honor, I should need another element before I could answer the question.

THE COURT: You may qualify it as you like.

MR. KRESEL: If there was a conspiracy as to which the officials acting knew nothing at all, then I do not think that the sale, if they had the power to make it, could be invalidated by reason of the fact that somebody else had entered into a conspiracy.

But if the facts were such as to justify a Court in holding that the officials either knew or had reason to believe or were put upon inquiry as to facts which would indicate a conspiracy, I think then they would not be acting in such a way as to be able to sustain that sale. It is the same question that your Honor had up with us in argument as to the seizure here.

THE COURT: The same underlying principles.

MR. KRESEL: The same underlying principles. You see, your Honor, in some respects they do not charge in the bill direct fraud against Mr. Palmer and Mr. Garvan and Mr. Polk and the President. There are allegations that are very broad. For instance, as to the Chemical Foundation, it is alleged that it was being used as a tool of the conspirators. The Chemical Foundation, it is our contention, was the creature of the Alien Property Custodian. It comes pretty near making a charge that the Alien Property Custodian was being used in that way.

THE COURT: That is, that he either did it knowingly or was duped into doing it.

MR. KRESEL: Exactly.

THE COURT: So that he might be called either one of two things.

MR. KRESEL: Of course, your Honor must by this time have seen how indefinite in particulars the bill is as to conspiracy and as to who was in it and as to how it was effected; and just because of its indefiniteness we are somewhat groping in the dark here. There is the charge, and Colonel Anderson has very frankly stated that he reserves the right upon the argument to claim, actual fraud against everybody. And if that is, it seems to us that we should not be confined to a narrow sphere in showing what information we had before us and what actuated us in doing this.

THE COURT: I do not know the contents of the editorial.

MR. KRESEL: I brought that to your Honor's attention upon my opening. Your Honor has perhaps forgotten about it. It is not a comment on this situation. It simply calls attention to the fact that it is reported that somebody was about

to establish dye factories over in Jersey and then Albert is asked about that and he comes back with the information that there is nothing in it.

THE COURT: That is just a link in the chain of events?

MR. KRESEL: That is all, your Honor. I was not trying to prove here an editorial comment on something.

THE COURT: I will admit it subject to such objection as was heretofore made or may hereafter be taken to it.

MR. KRESEL: Since the question has been raised, I want to read to your Honor this editorial. It is only half a dozen lines.

THE WITNESS: There are two letters that go with it, Mr. Kresel. You only offered one.

MR. KRESEL: I will offer both of them in just a minute. The editorial is headed "Helping Us Out". (Reading.)

I read the letter dated April 28th, 1915 from K. Boy-Ed.

Q. 78. Who was K. Boy-Ed?

A. Naval Attache of the German Legation, German Embassy.

Q. 79. Here in the United States?

A. Yes.

MR. KRESEL: To His Honor Privy Counsellor Albert, 45 Broadway, (reading).

On the same day Albert answers K. Boy-Ed as follows: (Reading.)

THE COURT: I recall all those letters, so that you need not repeat them.

MR. KRESEL: I now offer therefore, the editorial, the letter from Boy-Ed to Albert and the letter from Albert to Boy-Ed.

MR. ANDERSON: If your Honor please, I made up my mind not to interrupt this examination this

morning, but to the end that my position on the record may be perfectly clear when I get up to the argument of this case, I want to renew at this point the objection to all this evidence, especially the last three exhibits just offered by counsel and not formally admitted.

In the first place, they are not only hearsay, but they are hearsay of hearsay. They say, it is reported by somebody that somebody else has reported to somebody else that something is going to be done.

In the next place, they are not evidence against the Government of the United States, even if they were direct testimony and offered in the most formal, legal way.

In the third place, they would not be evidence in this case because the Government of the United States has not only repudiated all these transactions by sending the man who wrote the letter home for doing those very things, which is a matter of which the Court will take judicial notice; but the Government has been so outraged by these very things, that it went into a great war and fought the war to success, because of the very wrongs done by these people.

Now, to come up here and undertake to introduce evidence of the wrongs which we have undertaken to right in war, and spent the blood and treasure of this country in repudiating and overthrowing, as evidence against the United States, is an unheard of proceeding. I do not mean to comment on Mr. Kresel's remarks. I quite realize that is not my function; nor upon the rulings of the Court.

I understand, the way this matter is proceeding, that your Honor is not at all ruling; but I

submit that even under the broad rules which have been laid down, there are some limits to the introduction of documents here. So far as this case is concerned, all this stuff cannot affect this case in one way or another; but there are limits to which we can go in the introduction of evidence of this character; and certainly that limit has been reached when the evidence is not only, as I have said, hearsay, but hearsay founded upon hearsay plus hearsay, and in addition to that, is evidence which the plaintiff in this case has repudiated at the cost of a great war.

MR. KRESEL: Will your Honor hear me on that?

THE COURT: It is your privilege, sir, if you desire to take the time.

MR. KRESEL: I do not desire to take the time.

THE COURT: Your remarks raise two questions in my mind, Colonel Anderson, if you will be good enough to help me out without discussion.

MR. ANDERSON: Yes, I will.

THE COURT: The first is in regard to the act of repudiation, of which I can take judicial notice and which I happen to recall. Instead of detracting from the value of this evidence, my immediate reaction is that it makes what might have seemed unimportant possibly of some moment. The second is, assuming that you have a charge of conspiracy here, which, as I understand you, you do not deny, what is the method of meeting it by the persons of the Executive Department, if it cannot be met by showing the various acts and facts, as well as information, which came to the attention of the Executive Department.

MR. ANDERSON: As to the first inquiry which your Honor makes, I think that any reply that I

would have to make would necessarily be argumentative because I could not do more than to say that in my view the acts of these people were undoubtedly prejudicial in some aspects to the interests of the United States at that time, and its people, and were a justification for war. If we were trying to decide whether we were going to declare war, that would be all right, and I will agree to an affirmative verdict on that question without any more evidence, but on what possible theory can it affect the right of an officer of the United States to dispose of alien property during that war?

THE COURT: I am not going to pass upon the relevancy or irrelevancy, Colonel Anderson; but when you charge conspiracy you charge improper motives. I have not been able to see so far how you can completely disconnect and exonerate the officials, namely, Mr. Garvan, Mr. Palmer, and others directly interested in the transaction from the conspiracy, if it be established (you may; I do not care to have you go into that line); but is not one method of meeting that charge of conspiracy just the method that is being here pursued?

MR. ANDERSON: Your Honor asks me a question. I say I do not think so, sir, and possibly I may make my point clear by a suggestion, which is not intended as a suggestion either to counsel or to the Court.

It is charged that the persons interested in the American Dyes Institute and other affiliated associations desiring to obtain these patents for their own use, entered into a scheme to get them by having them seized and sold. That, in effect, is the charge.

Now, if it appears that the Alien Property Custodian knew the facts in regard to all this scheme, which has not appeared yet, then it might be that the evidence would show that he was a part of that scheme or conspiracy, if it be established, which I am not now arguing. Suppose he knew everything that has been said here, suppose he had it in writing before him, or a report on his desk, how does that change the legal status in any way whatever?

If he acted in accordance with the law and carried out the laws of the United States, then the question of all this past stuff that he knew would not be important; but if he acted with full knowledge or without knowledge (it does not make a bit of difference what knowledge he had),——

THE COURT: But in accordance with the law.

MR. ANDERSON: I am coming to that point. But if he acted with knowledge or without knowledge, for the purpose of transferring this property to private industry from the United States, either contrary to law or for a purpose not approved by the law, then the more he knew, the worse off he was. Therefore, the knowledge of these facts prior to the war cannot have any bearing whatever upon what he did at that time after the war was over.

Now, your Honor asked a question, and to make the point clear, I am going to answer it, if you will allow me, just now. I said that if the Alien Property Custodian did not know a thing about what these dyestuffs people were doing, assuming they have been guilty of the acts charged here, which is not now a question for argument, and assuming, without meaning anything unpleasant, that they entered into a con-

spiracy to get control of this property, and assuming that we have proved that, that the Alien Property Custodian might have been active in the sale, with the best of motives, and not a party to the conspiracy, why, there is nothing more familiar in the law than setting aside a sale of this sort, because it was developed as a secret combination of bidders to prevent someone else from bidding. The Custodian in making the sale might have acted in the best of faith. I did not mean to get into an argument. I was merely undertaking to answer your Honor's question. It is possible that this matter has not anything to do with it. I do not know that it is material. Possibly we are taking up unnecessary time, because I do not think that it can have any bearing.

THE COURT: I understand your contentions with respect to that point, Colonel Anderson. You may proceed, Mr. Kresel.

Letter from Albert to Hossenfelder, of April 19, 1915, received in evidence and marked "Defendant's Exhibit No. 64." (*See Exhibits, Vol. IV, page 2428.*)

Letter from Boy-Ed to Albert of April 28, 1915, received in evidence and marked "Defendant's Exhibit No. 65." (*See Exhibits, Vol. IV, page 2429.*)

Editorial from New York World received in evidence and marked "Defendant's Exhibit No. 65-A." (*See Exhibits, Vol. IV, page 2430.*)

Letter from Albert to Boy-Ed of April 28, 1915, received in evidence and marked "Defendant's Exhibit No. 65-B." (*See Exhibits, Vol. IV, page 2431.*)

Q. 80. Will you proceed, Mr. Garvan, to mention the next document?

A. The next one is letter to Joseph P. Tumulty,

private secretary to the President of the United States, April, 1915.

Q. 81. That is already in evidence.

A. The next one is a letter of Herman A. Metz to Mr. Rose, who was the Foreign Trade Adviser of the State Department, April 6, 1915, Senate resolution 271.

MR. KRESEL: I offer in evidence a letter from Mr. Metz to Robert F. Rose, Foreign Trade Adviser, Department of State, dated April 8, 1915, printed at page 271 of the Hearings before the Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 66." (*See Exhibits, Vol. IV, page page 2431.*)

Q. 82. What is the next one?

A. The next one is a letter of Herman A. Metz to Secretary Redfield, who was the Secretary of the Interior.

Q. 82 (continued) Secretary of Commerce.

A. Secretary of Commerce, April 9, 1915.

MR. KRESEL: I offer in evidence a letter from Mr. Metz to Secretary Redfield, April 9, 1915, printed at page 272 of this same Hearing before the Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 67." (*See Exhibits, Vol. IV, page 2434.*)

Q. 83. The next one?

A. The next one is Mr. Metz's pamphlet of April 22, 1915.

Q. 84. That is in, and the next two are in, Mr. Garvan.

MR. KRESEL: You do not mind, Colonel, if I

straighten that out? My information is that they are all in down through 36.

Q. 85. Will you give me No. 37?

A. 37 is an article I took from the desk of Mr. Hugo Schweitzer, after his death.

Q. 86. Who was Hugo Schweitzer?

A. Hugo Schweitzer was the former president of the Bayer Company in this country, the American Bayer Company. That is the American corporation which was the agency of the German corporation.

MR. ANDERSON: That refers to an article. Would you get the witness to describe it, please?

THE WITNESS: Called "Chemists' War."

MR. KRESEL: It is printed at page 226 of that volume you have before you, Colonel. I offer that in evidence.

MR. ANDERSON: I would like to have made as clear as possible, sir, that this evidence is not being introduced for the purpose of proof of any facts contained therein, but is just merely for information, that these particular papers were before this witness, as I understand there is a limit to this evidence. I do not know that it does appear clearly on the record, I would like that to apply to all this evidence, and, of course, I am not making my objections to each question under that understanding.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: I have already, your Honor, indicated my position.

THE COURT: That the admission of the Government reports and the offer that you are now making are limited to——

MR. KRESEL: Showing what information the witness had before him.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 68." (*See Exhibits, Vol. IV, page 2438.*)

Q. 87. The next one?

A. "The New Chemical Warfare," an article by Julius Stieglitz, in the Yale Review.

MR. KRESEL: I offer that article in evidence, beginning at page 493 of the Yale Review of April, 1918.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 69." (*See Exhibits, Vol. IV, page 2457.*)

Q. 88. The next one, Mr. Garvan?

A. "German Militarism and its Influence upon the Industries," another article by Hugo Schweitzer, which was taken from his effects after his death.

MR. KRESEL: I offer in evidence the article just described by Mr. Garvan, which is printed in the Hearings before the Sub-Committee on the Judiciary, beginning at page 241 thereof.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 70." (*See Exhibits, Vol. IV, page 2477.*)

Q. 89. The next one?

A. "The President's Protest to Great Britain and its Justification by the Perils to our Trade and Industries," a third article by Hugo Schweitzer, which was taken from his effects after his death.

MR. KRESEL: I offer in evidence the article just described by the witness, which is printed in the Hearings before the Sub-Committee of the Committee on the Judiciary, beginning at page 233 thereof.

THE COURT: Admitted.

Received in evidence and marked "Defend-

ant's Exhibit No. 71." (*See Exhibits, Vol. IV, page 2491.*)

Q. 90. The next one?

A. Consul-General Hossenfelder's Report to Bethmann-Hollweg, March 3, 1916, House Hearings, page 495, Senate Hearings, page 261.

MR. KRESEL: I offer in evidence the report described by the witness, which is printed at page 261 of the Hearings before the Sub-Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 72." (*See Exhibits, Vol. IV, page 2514.*)

Q. 91. The next one?

A. Albert's report to the German Government on the dyestuffs situation, April 26, 1916.

MR. KRESEL: I offer in evidence the report just described by the witness, which is printed in the Hearings before the Sub-Committee on the Judiciary, beginning at page 259.

THE COURT: As evidence of the facts therein stated, or as information that was before this witness?

MR. KRESEL: As information before this witness.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 73." (*See Exhibits, Vol. IV, page 2525.*)

Q. 92. The next?

A. Letter to Foreign Secretary Zimmerman, of Germany, by Ambassador Bernstoff, May 21, 1916.

MR. KRESEL: I offer in evidence the letter just described from Zimmerman to Bernstoff, dated May 21, 1916, printed at page 265 of the Hearings before Sub-Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 74." (*See Exhibits, Vol. IV, page 2529.*)

Q. 93. Next?

A. Bernstoff's explanatory report in answer thereto.

MR. KRESEL: I offer in evidence the report of Bernstoff to the German Foreign Office, dated June 21, 1916, printed at page 265 of that same volume.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 75." (*See Exhibits, Vol. IV, page 2530.*)

Q. 94. Next?

A. Letter of Kuttroff to Dr. Albert, September 20, 1916, Senate Hearings, page 225.

MR. KRESEL: I offer in evidence a letter from Mr. Kuttroff to Mr. Albert printed at page 225 of the Hearing before the Sub-Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 76." (*See Exhibits, Vol. IV, page 2534.*)

Q. 95. The next one?

A. Dr. Schweitzer's report to Bernstorff, January 26, 1917, page 526.

MR. KRESEL: I offer in evidence report of Dr. Schweitzer to Mr. Bernstoff, which is printed at page 526 of the Hearings before Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 77." (*See Exhibits, Vol. IV, page 2534.*)

Q. 96. The next one?

A. I think 49 and 50 are in, aren't they?

Q. 97. Yes.

A. Letter of Dr. Stieglitz to Mr. Palmer, and Dr. Stieglitz's report on Salvarsan enclosed.

Q. 98. That is in. What is the next one?

A. The next one is the report of the Allied Commission on German dye factories by Lord Moulton.

MR. KRESEL: I offer in evidence the report just described by the witness, which is printed at page 286 of the Hearings before the Sub-Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 78." (*See Exhibits, Vol. IV, page 2543.*)

MR. KRESEL: I offer in evidence a report by Mr. C. H. Burr on German business in the United States, which is printed at page 476 of the Hearings before the Sub-Committee on the Judiciary.

THE COURT: That has been identified by him or are you offering it apart from the identification?

MR. KRESEL: That has been identified by him, your Honor.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 79." (*See Exhibits, Vol. IV, page 2544.*)

Q. 99. Mr. Garvan, I wish you would state briefly what, if any, information you had on April 10, 1919, concerning the relations, if any, of Germany to the organic chemical industry of the United States prior to the outbreak of the war in 1914?

MR. ANDERSON: I note the same objection that I noted on Friday, your Honor, to the generality and indefiniteness of this question.

THE COURT: Is this the same question?

MR. KRESEL: No, your Honor, it is a different question. I have made it as nearly not leading as it could possibly be done. Would your Honor desire to have it read?

THE COURT: Yes.

(Q. 99 repeated as above recorded.)

MR. ANDERSON: In order to make the record clear, sir, I will make the objection specifically to that question: First, on the ground that it is too general and indefinite, and therefore is objectionable as to form. Second, because the witness has testified that his connection with this matter began in November, 1917, and, therefore, his knowledge on the subject is necessarily hearsay and not facts. Third, the general and specific objections which I have already urged and which I understand your Honor does not wish repeated as to all this testimony.

THE COURT: Apart from the general objection, I think the objections of the Government are not well taken. I think this is much more limited than the question of Friday. You may take the answer.

A. The information that I had was to the effect that prior to 1914 Germany had five or six agencies here, which represented the five or six companies commonly called the Big Six, which had control of the chemical industry of Germany. My information was that those six companies had been combined into a coalition or agreement, three each in two combines, and that together they controlled practically the entire organic chemical industry of Germany; that the agencies here had no independent existence of their own, but were the merest agents and servants of the German industry; that the German industry had monopoly of the American organic chemical industry, par-

ticularly as to dyes; that there were here nothing but three or four assembling plants who were dependent entirely upon the intermediates which they, in turn, got from the six German companies in Germany.

My information was that this industry in Germany had been built up carefully and slowly since about 1856, when it was founded upon the discovery of William N. Perkins, of the Color Mauve. He was an Englishman working in a German's laboratory in London, named Hoffman, and the English were not sympathetic to his development, and he took the English Perkins discovery back to Germany, and there Germany began to develop it.

My information showed that whereas in America we had absolutely no understanding of the relation of organic chemistry to industry or to national defense, or to the progress in medicine, that each and every one of the Germans with whom I came in contact had an absolutely complete understanding that it was the life blood of modern industry and that it was the foundation of modern war, and that it was the hope of future medical development; that they were brought up to regard that as the special province and the special asset of Germany; that each boy and girl in Germany was compelled from the time they were twelve years old until the time they were eighteen——

THE COURT: It seems to me this is rather far afield, Mr. Kresel. Do you not think so?

MR. KRESEL: Well, I want to be entirely frank with your Honor. I do not think that it is. I think that to judge what these people did your Honor must know what they had in mind, your Honor must know what they had before them. Your Honor must realize what they were trying to accomplish. What he is now doing is contrasting the situation in Germany with that in the United States, what

he learned. He is showing how Germany regarded the organic chemical industry and the education connected with it and how we neglected it here. It naturally leads up to the reasons which actuated them in disposing of this property in the way that they did. I will ask Mr. Garvan to be as brief on this historical feature as possible.

THE COURT: If there is doubt about its materiality it may be taken, because that is the question that we have reserved; although at the moment it seemed to me he had probably gone farther afield than would be of service.

THE WITNESS: All I meant to say was——

MR. ANDERSON: May I make one brief statement to your Honor. I do not know that I have made it clear to the Court that in this case it seems to me obvious under the statute that the only reasons actuating these people in this sale are the reasons stated in writing by the President, or by the person issuing the order upon which the sale was made. The only evidence which can have any bearing here is evidence in connection with those particular matters, and whether that is admissible or has any bearing, I am not now undertaking to argue.

The Congress has declared that in the case of a private sale the reasons therefor in the public interest must be stated in writing. If they had stated no reasons in writing the order would be void ab initio. The sole question is, What were the reasons stated in writing in the order? I do not think I have heretofore made that clear to the Court—at least it is suggested by one of my associates that I have not. That is all I have to say.

THE COURT: It seems to me that you did not confine your position to that, Colonel Anderson.

You said it was within the judicial province to test the sufficiency of the reasons stated, but it seemed to me that you took a further step and said not only was it within the province of the judiciary to determine the sufficiency of the reasons stated, but also as to whether those reasons were justified by the facts underlying their statement. If that is your position, then I do not see where the limit is to the inquiry into the underlying facts, do you?

MR. ANDERSON: It depends on what you would call reasons for underlying facts.

THE COURT: No, not what I call it.

MR. ANDERSON: When I say you, of course I mean what one would call it in disposing of the question. I did not mean it to be personal to your Honor. I confined my inquiry to a large degree in this case, if I did not entirely, though the case is so confused that I cannot say I did now, to the reasons stated in the order——

THE COURT: Would you care to limit them at this time, to abandon at this time your prior contentions of your right and purpose to go behind the reasons stated in the Presidential orders and Mr. Polk's orders?

MR. ANDERSON: No, not to that extent I do not. But I do say this: that beyond that question the sole inquiry, as I can now think of it, would be what facts were represented as a basis for those reasons and not what this witness knew or what he may have known. But if the reason assigned is founded upon a mistake of fact or a misconstruction of the law, I think it would be a subject of inquiry. All this is something that this gentleman heard from somebody else about conditions existing prior to 1914, and I am a little

puzzled to know its connection. But I did not intend to get into that argument, if your Honor please. I merely wanted to make clear my view on that point which I was told by one of my associates I did not make clear.

THE COURT: I think you did make it quite clear. Then I cannot ignore or forget, in respect to this testimony, the allegation of conspiracy which seems to me, possibly, to prevent my being able to say at this time that it is clearly and wholly irrelevant.

You may proceed, Mr. Garvan.

A. (continuing) My information was that the system of education in schools and colleges and universities had been aided and fostered by the Government as an aid and feeding to this organic chemical industry; for instance, of the graduates of the universities, any one who desired was permitted to go to the dye factories and spend two years in research at the dye factories' expense.

The Government, the University, the schools and the High Schools and the factories all worked with a single unity of purpose and more or less with a single unity of Governmental control, with the intent and object of attaining what they had practically attained at the beginning of 1914, that is, a world monopoly in the organic chemical field; and that they had done this deliberately and with an intention, as shown by Senator Aldrich's book that he introduced in 1910, of eventually combining into one cartel with a singleness of purpose; and that as soon as that monopoly of the organic chemical industry had been attained, to use that monopoly to the aid of its other industries which are dependent upon dyes and pharmaceuticals, such as the textile and leather industry, and so forth.

This was shown further by the fact that all the

dye salesmen practically were all educated with that singleness of purpose. They were sent to the Government in Berlin and instructed in reporting on conditions in foreign countries. They were then sent to the dye factory and drilled, and they came here as salesmen. We found the trunks of thirty of them in the basement of the Bayer Company filled with their reports back to the German Government on trade conditions in each trade and industry here. They were the men who taught the industries how to apply the dyes either to the leather or to the cloth. That made the element of saleability on the leather or the cloth, and therefore they had the full run of, say, a carpet factory. They would report back every invention of machinery, the design, style, cost and so forth and so on; every detail that a German manufacturer attempting to rival or compete with an American manufacturer of carpets wanted was reported to Berlin by the dye salesmen. That information was usually card indexed—I have forgotten the name of it—so that they could go to that card index, ascertain the report of the dye salesman and get a report, for instance, on how the people of Wilmington like their carpets, the design and the cost here, and so forth and so on. So that he was able to sit there in Berlin and compete with each section of the world under the most favorable circumstances and with a full knowledge and with full information of what the report showed.

MR. ANDERSON: If he is going to testify to the contents of reports, I ask that they be produced. We have to have some opportunity to see the sources of this gentleman's information.

MR. KRESEL: You mean that you ask——

MR. ANDERSON: I ask you to produce the contents of all reports as to which he testifies. If we are going into this matter, we will get into

it. I object to any evidence as to reports or written documents that are not produced in court.

THE WITNESS: Your office is full of them.

MR. KRESEL: Wait a minute. Whatever reports this gentleman had in his official capacity are not now in his possession. They are in the possession of the Government, and it is not up to us to produce them.

THE COURT: Do you want to make any demand now for their production?

MR. KRESEL: If counsel presses the objection or suggestion that we have got to produce these reports, I now ask that the Government produce them.

MR. ANDERSON: If your Honor please, if this evidence has any materiality whatever, there must be some opportunity to test it. This gentleman has testified as to reports to the German Government found at the Bayer Company, and reports to other people, I do not know who they were. If it has any materiality at all, to test the evidence, we must have the report. He cannot testify to the contents of reports without producing them. Therefore, I will ask that he do not give evidence as to the contents of written documents unless the documents are here to be examined.

MR. KRESEL: Colonel, you say that you must have. I say that you have. You have them in your possession.

MR. ANDERSON: I am informed, Mr. Kresel, that we have no such reports as those described by the witness.

MR. KRESEL: I am sorry that you cannot locate them. We are not chargeable with that.

I think, your Honor, that perhaps this is as good a time as any to settle this question of the

necessity of producing written documents. My understanding of the rule is that upon collateral matters, the best evidence rule does not apply.

THE COURT: Do you disagree with that, Colonel Anderson?

MR. ANDERSON: That is the general rule, but there are so many exceptions to it. I think in this case this witness cannot testify to the contents of documents without producing them.

MR. KRESEL: Then this is one of the exceptions, if you are going to call it an exception? I rather regard it as a general rule.

THE COURT: Colonel Anderson, may I make this inquiry? It is unquestioned that a contract or statute which is in doubt may be placed back in its original setting to ascertain its intent, meaning and purpose, is it not?

MR. ANDERSON: Yes, sir.

THE COURT: That is the general rule.

MR. ANDERSON: The general rule, I admit, sir.

THE COURT: Do counsel in this case disagree as to the meaning, interpretation, aim and purpose of the amendments to the Trading with the Enemy Act of 1918, as I understand you?

MR. ANDERSON: I do not think we disagree, sir. I do not think we disagree as to the amendment of March. We might as to the construction of the clause as to the President and private sale. But the act gave general power to the Alien Property Custodian to sell. I do not think anybody questions that.

THE COURT: As I understood you, I rather got the impression that the interpretation of that act was the basic question in this case.

MR. KRESEL: That was my understanding throughout. I have understood Colonel Anderson

to argue and to contend that under that amendment of the act the Alien Property Custodian still remained a trustee, with the absolute duties of a trustee to sell for no less than the property was actually worth.

He contends that notwithstanding the provision that the President, in the public interest, might otherwise direct, all that means is that the President can direct that it be a private sale and not a public sale, but that it still had to be, as he called it, a fair sale and that a fair sale meant full value and that a fair sale meant that there could not be, as he claims, what he terms here a combination of bidders.

He denies that that amendment gave any broader powers than had theretofore been had except that it amended the act so as to provide the method of disposition.

I understood him to decline to give any force to the sentence in that act giving to the Custodian the same power over the property as if he were the absolute owner. Of course, it must follow that if he is but a trustee, he cannot do anything with the property but if he sells it, to sell it for every cent that it is worth. That certainly is not consistent with the provision that he may do with it as an absolute owner may do with it.

THE COURT: The purpose of my inquiry was this. Under the interpretation of that act, unless its meaning is clear and fully disclosed by the language used in the act, must we not inquire as to the full conditions surrounding its passage and the evil that it was intended to remedy, or not? Or, is that too broad a field?

In other words, must we not remember, in the interpretation of that act, that it was a war act, that it was intended to cure evils which had

been demonstrated to exist during the war, or not? Or, must we interpret the act as if it were passed yesterday instead of in 1918?

MR. ANDERSON: I think we have to interpret the act at the time it was passed. If there be any doubt as to the meaning of the act—and in view of the fact that the distinguished counsel for the defendant seems to take issue with me on its interpretation on every point, there seems to be some doubt—if there be any doubt as to its meaning, then, of course, the Court may, to a very limited extent, and with great caution, look to the immediate surrounding facts and circumstances. But if the conditions of education in Germany prior to 1914 and going back to 1902 will aid the Court in arriving at that interpretation, I will not object to that.

THE COURT: I have indicated my doubt about that, but in view of the issues, particularly of conspiracy, and the construction of this act, I doubt if I am able to say at this time with absolute certainty that it is fully without weight.

Now, then, we have departed from the primary objection, namely, the production of these documents. But before going into that, I want to ask this. Can I get you to help me, if you will, Colonel Anderson?

MR. ANDERSON: I will with great pleasure, if your Honor please.

THE COURT: Assuming that it is true, notwithstanding the broad powers conferred upon the officers in the Executive Department or on the President to make a sale and to make a private sale, that, as I understood you to say, they were still not authorized to make sales so as to create a monopoly—that is, even a public sale—the pub-

lic sale would have been invalid if such sale resulted in a monopoly; is that your contention?

MR. ANDERSON: Undoubtedly, sir. Speaking in a broad way, that is true.

THE COURT: Now, then, do I understand you to say—I do not believe I have asked you this question—that the sale in question resulted in a monopoly or produced a monopoly?

MR. ANDERSON: Perhaps it would be more accurate to say that the object and purpose was to create a monopoly and control over foreign and interstate commerce. In other words, restraint of trade, using that term in its broad sense, of foreign and interstate commerce is an essential step in a monopoly. There can be no monopoly without restraint of trade, but there may be restraint of trade without a monopoly.

THE COURT: I have missed what you said.

MR. ANDERSON: I say that restraint of trade —and by that I mean foreign and interstate commerce in the Federal sense—is an essential element in a monopoly.

THE COURT: Is that not a necessary incident of process and product patents?

MR. ANDERSON: Necessarily, it is incident, but you cannot combine them all under one control without seeking to accomplish thereby a purpose which is forbidden by the laws of the United States.

Any individual can go to the Patent Office and get any number of patents in pursuance of the law. But if those individuals, say a dozen individuals, holding patents controlling a certain industry, combine those patents for their common use, and thus create a restraint upon production, or combine those patents into a holding

company for their common use, for the purpose of restraining foreign or interstate commerce or creating a monopoly, which is the next step beyond, then their act in that regard is illegal under the Sherman Act.

THE COURT: Won't you help me just a step further, Colonel Anderson? If these patents were taken out of the hands of Germany, and if there were enough to go around to every inhabitant of the United States, if there were distributed one to each inhabitant of the United States, under the powers conferred by those patents, if they were valid, they would have a restraining influence and effect upon importations and consequently upon foreign commerce, and would have made a monopoly as complete as were the patents with respect to foreign commerce; is that not so?

MR. ANDERSON: Yes, sir. Possibly that would be true if they were distributed; yes sir.

THE COURT: There can not be any doubt about it, Colonel.

MR. ANDERSON: That is right. Each man who owned a patent would have been able to put a tax on importation as to his patent.

THE COURT: As to his patent. Consequently the extent of the restraint upon importations would have been precisely what it would have been if you had bought them all.

MR. ANDERSON: That would depend upon what importation license each individual would impose. It might or might not be.

THE COURT: Now then, Colonel, we are departing from the sale into actions later on.

MR. ANDERSON: That is exactly what the Sherman Act contemplates. I may own a patent and put an importation license on one element of trade. These were both product and process patents,

your Honor will recall. I may put an importation license on one element of trade—I have the right to do it under the patent law. I may own a group of patents and put an import license upon the importation from England, Germany, Switzerland, Italy, and so on, on the products covered by the group of patents. But that is a right given to me by the laws of the United States.

But, if I and a dozen other people have each a group of patents which control a certain part of a certain commercial product in the United Seates, and we get together and say, "Here, we will control all these importations and impose at the port such restrictions as will practically make importation impossible from any foreign country—and we also have the process patents and will manufacture in the United States," then by that combination for the purpose of restraining interstate and foreign commerce, and for the purpose of creating a monopoly in the United States, they would be guilty of a wrong of which each individual, limiting himself to his particular act, would not have been guilty. That is the ordinary interpretation of the Sherman Act.

THE COURT: Does your evidence offered in this case show that the defendant here has been guilty of such acts?

MR. ANDERSON: Of course, I am not undertaking to review it and the Government does not expect me to, but the evidence in this case shows that whereas on the manufacture in the United States under the process patents they imposed royalties of from two to three to five per cent. on all importations they imposed a royalty of ten per cent., whether from England, Germany, Italy or anywhere else, and that, among other royalties, they imposed ten per cent. upon the reparation

dyes owned by the Government of the United States and brought into this country from Germany for the purpose of maintaining its industries amounting to $215,000, according to the present testimony; and this defendant is the only one that collected a cent of profit, so far as this record discloses, or that I know of, upon reparation dyes.

Therefore, if they combined and made a contract of sale for the purpose of putting into the hands of this agency, which was nothing in the world but an agency of the dye manufacturers of the United States, and the evidence here discloses it all these patents for the purpose of preventing importations into the United States, and the other facts and circumstances show that purpose conclusively or establish it to the satisfaction of the Court, then this contract of sale was a part of a scheme which is forbidden by the laws of the United States and absolutely void *ab initio* under the Sherman Act. That is my position.

THE COURT: Then that discloses more fully your purpose in introducing the minutes of the Dyes Institute?

MR. ANDERSON: Yes, sir. We are going to contend that the minutes of the Dyes Institute, when your Honor comes to read them, are the most important evidence in this case, because they show what was going on from the time this was conceived until it ended.

THE COURT: Assuming that the defendant was a separate instrumentality and agency created at the request of the Executive Department of the Government, that it was established on lines and plans that were deemed as far as possible to prevent a monopoly, and yet that agency or instrumentality, or defendant here, did after it was created do certain acts which were forbidden by the

Sherman Act, is the redress the setting aside of the sale, or is it direct action under the Sherman Act?

MR. ANDERSON: Your Honor has assumed a premise and I submit that the premise is not complete. Although it may not be a material difference, I cannot answer a question predicated upon the idea that this thing was conceived by an officer of the Government of the United States. I think the contemporaneous documentary evidence is abformerly given by these very witnesses is conclussive to the contrary, as showing that this thing was built up and developed in all its phases on the suggestion of the dye industry of the United States.

If the officers of the United States, mistaking their legal duties and obligations, entered into an arrangement with the dye industry, a contract or arrangement for the consolidation of these patents in the hands of an agency composed of all the manufacturers in this business, for the combine of those manufacturers into a group, organizing this hand to hold all these patents, not only the control of the manufacture to the extent that the patents controlled it, but to control the importation—I say that from the very inception the thing was illegal and that this contract of sale was illegal from the very time it was conceived and on the day it was executed, no matter who authorized it, because nobody could do a bigger thing than an Act of Congress might do. That is my position.

MR. KRESEL: I wish, your Honor, that Colonel Anderson had directly answered your Honor's inquiry. I should have been interested to hear it.

MR. ANDERSON: I want to say something on that point.

MR. KRESEL: Your Honor's inquiry was

whether it was his contention that the act of the officers here resulted in creating a monopoly. Colonel Anderson has not answered that question. And while we are on this proposition, your Honor, I had it in mind at the first opportunity to point out that Colonel Anderson has been arguing right along that the very fact that Congress permitted the taking out of patents, it was the intent of Congress to give the holder of the patent the monopoly.

Colonel Anderson loses sight of the fact that the latest pronouncement from Congress upon the subject with reference to German or enemy-owned patents was to destroy that monopoly, since by the very Trading with the Enemy Act Congress gave to the Federal Trade Commission the power to issue non-exclusive licenses to any American citizen on those patents.

In other words, Congress by its act destroyed the monopoly that had theretofore been given to the Germans. So that if we are to judge the situation as it appeared to these officers when they put this transaction through, the fiat of Congress at that time was that the monopoly that had been given to the Germans should be taken away from them, and it is going to be our contention that it was with that purpose this corporation was organized, upon the very lines indicated by Congress in the Trading with the Enemy Act, which, at the very basis, was the issue of non-exclusive licenses on these patents so that nobody would have a monopoly.

I say I would have been interested in hearing what answer Colonel Anderson would make to your Honor's direct question. Because I cannot conceive that he would argue that The Chemical

Foundation maintained any monopoly. The Chemical Foundation is not in the manufacturing business, it has never manufactured anything. It has never turned a wheel. It is simply a holder of these patents, and deals with them, as we shall show, as it has been outlined in our certificate of incorporation.

Indeed, your Honor will find when this case closes that so far from there being a monopoly here, there is the keenest competition in this country, not only in the matter of dyes but in the matter of pharmaceuticals, in the matter of anything that pertains to the organic chemical industry in the United States.

I can well understand why Colonel Anderson did not feel that he desired to answer the direct question.

MR. ANDERSON: I would like to respond to this.

MR. KRESEL: What brought about this very interesting discussion was the question whether we were compelled to produce writings as to which this witness is testifying.

THE COURT: Yes, but I was more interested in the underlying question of the relevancy of these facts, which seems so far afield, and I could only form an impression about the relevancy if I could have it——

MR. KRESEL: Crystallized.

THE COURT: Crystallize—crystallize it and get a comprehensive idea of the issues, as I have been trying to do from day to day.

MR. KRESEL: Yes.

THE COURT: And, Colonel Anderson, I do not understand now whether it is your contention that The Chemical Foundation is a monopoly, or by its creation, in taking over the German patents, a

monopoly was created, and if it is your thought that thereby a monopoly was created, I have been trying to determine for myself as we go along, tentatively, what sort of an organization, what sort of disposition, or in what manner the Government of the United States now says the German patents should have been disposed of so as to avoid a monopoly. In answering that question, if you will—and I should appreciate it if you would answer it—tell me whether if you bought one patent and I bought another, we each would not have had a monopoly, and a complete monopoly with respect to the matters embodied in or covered by such patent. If so, what is the thought of the Government now with respect as to what should have been the disposition of these patents?

I do not ask that to inquire into the Government's purposes or plans, but in order that I may weigh that plan, and by so doing determine whether or not a monopoly is created or was created by the sale of the Alien Property Custodian.

MR. ANDERSON: I will answer your Honor's question to the best of my ability. As your Honor's inquiry involves the suggestion of distinguished counsel for the defendant that I have not replied directly, I will say that in my view of the evidence in this case it shows that the purpose of the organization of The Chemical Foundation, certainly in so far as those who financed it and brought about its organization are concerned, was to control and monopolize the dye industry of the United States, both in production and distribution, first through the control of the process patents to the extent that they did control them, and, second, through the control of importations from foreign countries; that therefore the object and moving purpose in this entire transaction was to restrain

the foreign and interstate commerce, to control manufacture and distribution as a step in the monopolization of the dye stuffs and chemical industry of the United States.

Now, I think I have answered your Honor's question in a perfectly plain way. Control of those elements is a process or step in the monopolization; and the monopolization may never be accomplished, yet every step in the scheme to accomplish that result is expressly forbidden by the laws of the United States.

THE COURT: Even the seizure of the patents?

MR. ANDERSON: I am coming to the patents. If the seizure of these patents was conceived and carried out for the purpose of creating that result, as your Honor has suggested that thought, I will say it may be that primarily if it could have been a sale to a proper person, as against the United States, it may have affected the seizure; but there is no person who can contest the right of the United States to seize these patents under the Alien Property Act, because the German cannot sue the United States to recover them, he being the original owner, nor can he, under the terms of the Treaties of Peace question the acts of the United States in that regard. Therefore, the act of the United States in making the seizure, even though it may have been infected, if I may use the word, by this purpose, and if it had been the act of a private person, might have been void *ad initio,* but cannot be assailed as to the United States, because nobody can sell it. It is just like a case where the United States commits a tort, nobody can sue the United States. It may be wrong as to a private person, but not as to the United States, because you have no redress. It may be a wrong, but there is no remedy.

Therefore, there is nobody here questioning the title of the United States, and there is nobody here can question the title of the United States; because the defendant claims through that title, and there is nobody outside, even if your Honor could consider that, who could question the title of the United States.

So the question of the validity of the seizure, even if done for a wrongful purpose, and assuming it might have been so done, which I am not claiming here and not discussing—because it is not before the Court and cannot be before the Court, the question of the validity of this seizure as a matter of law—it may be interesting as showing a development of facts dealing with the ultimate conspiracy and only interesting in that aspect, but if proved here to be absolutely invalid the Court could not enter a decree based on that between these two parties.

If I have made that clear I will come to your Honor's second question. Before I do that and as an incident to it, I wish to refer to the suggestion of counsel as to the Federal Trade license. Congress authorized the President and he in turn with authority of the act vested in the Federal Trade Commission the power to issue licenses under enemy patents during the war, either exclusive or non-exclusive in the discretion of that Commission. So far as I know they issued non-exclusive licenses. That was during the period of the war, but they issued them and issued them for the life of the patent. Probably they had that right, but, as so often stated, that right had been subject to the review of the Court at the end of the war by suit within one year, by the owner, for revision, for cancellation of the license, or for such re-adjustment thereof as the Court might

determine to be just and equitable. Therefore, the right of the owner was absolutely preserved as against the United States, the purpose, and the entire legitimate purpose, being to make these patent rights available during the period of the war, if it were deemed desirable by the Federal Trade Commission to issue licenses. But the whole matter was left in the hands of the Courts of the United States, which have never yet failed to respond to their duty in that regard, to do justice to the enemy at the end of the war.

They had to charge reasonable royalties, and those royalties went into the Treasury of the United States, held as a fund, to be paid ultimately to the owner, whoever that owner might be determined to be. If that royalty was not reasonable it was revised by a Court of Equity, and there at last the owner, although he was the enemy whom we have heard so much about, might come into the courts of this country and have his rights protected when peace was once more restored.

But what is the situation here? Entirely different. I will not go over that. But now I come to your Honor's question as to an individual patent. If I have not made myself clear I want to make it clear that I agree with one thing that Mr. Palmer said while he was on the stand, and possibly with a good many others, but the one is that the whole value of the patent is in the monopoly right. That is all it is. You take that away and there is nothing left—except if you grant nonexclusive licenses to anybody and reserve title to the patent, you still have the right to collect the royalties that people will be willing to pay, and therefore, it does not necessarily follow, though it may and I think does follow in these cases, that

it is largely destructive of the value of the patent, if the patent be of such character that non-exclusive licenses will increase the production, and even at the low rate which would thus be obtained, give quantity production in the place of small production, and thus make a small royalty greater than the profit on a small production—in that case it might be that the value of the patent to the owner would still be very great. But those are questions of fact in each particular case.

As to the monopoly situation, we will assume I own a patent and, as your Honor suggested, you buy a patent. We will assume that it was a patent on an essential dye product, that is, an importation product. I would have the right, if it were a product patent, to levy royalty at the port on all importations of that patent. If it were a process patent, I would have a right to charge a royalty for the manufacture in the United States, and, assuming it to be broad enough, nobody could either manufacture or import except by paying me a reasonable royalty. As a matter of fact, I might even make it an unreasonable royalty, because Congress gives such patentees large rights in the interests of the developing of industry. You do not have to use the patent; there is no obligation to use it, if you do not want to. The benefit to the public is that there is full use after seventeen years, and Congress has determined that seventeen years is a reasonable time, so we cannot inquire behind that.

But there I have the right to control a certain product. That principle might be carried possibly to the point that if I got patents individually, was so brilliant that I could invent and devise every known element in a certain large and valuable part of the business of this country, I might grow enor-

mously wealthy, just like Henry Ford has done by inventing the one ignition system such as he has controlled, and so might others who have not allowed anybody else to use their patents. But that is the law. However, if I own forty-five hundred and another owns forty-five hundred, or a thousand of us own together groups of patents which combined make up forty-five hundred and control, as alleged in this report of Mr. Palmer, practically control and hold by the throat the dye and chemical industry of the United States through those patents, and as five hundred or a thousand of us own them we say, "Here, there is no use of one of us trying to levy one toll on one of these products and another levy another toll, which will drive the royalty down, the thing for us to do is to have a uniform royalty among us all and a uniform price in the country, and also inside, in its manufacture, and therefore we will combine all these into a corporation which we will call a corporation greatly beneficial to American industry."

I know of no place where terms of patriotism and public spirit are more extravagantly used than in these minutes of these great corporations, always as a reason for actual and improved public service. Possibly it may be true. But we combine them all and we control the importation of those essential products into the United States, we fix a uniform royalty, we eliminate competition, we cannot cut under each other, one cannot bring it in at 5 per cent. and the other charge ten, and thus produce competition which reduces the royalty charge, but all fix the rate at 10 per cent., and if that does not cut it all out we charge fifteen—as Richelieu says, it is like glass, the sun shines through it, the purpose is too obvious to discuss, and it becomes a restraint upon foreign commerce

from its very inception and, actuated by that purpose, it is therefore illegal.

THE COURT: Isn't that the purpose of Congress in the Trading with the Enemy Act requiring the Americanization of the chemical and dye industry?

MR. ANDERSON: I am perfectly willing to concede that Congress did not require but authorized There is not a requirement in this act for the sale of a piece of property. These patents could be held by the United States until Congress acted. They were in its hands and were not ready to substitute some other agency in the place of our Government to fix our policies and exercise its functions. They had these patents, they had complete control of them. They have reserved control of them in the act. Why did Congress have to get rid of them?

THE COURT: I beg your pardon?

MR. ANDERSON: Why was it necessary to get rid of them? I do not mean to ask your Honor a question, but that is merely argumentative.

THE COURT: No, you have disclosed your thought. But unless it was the purpose or thought of Congress that some of them, or all of them should be disposed, why authorize either a public or private sale?

MR. ANDERSON: We are getting now to the act and I will answer your Honor's question very briefly. It was urged in Congress, in the very parts of the record introduced here by counsel, and as to which others will be introduced by us since they have started it, and your Honor will find when you come to read it, that originally until this act went to conference it did not have any provision for private sale, it was purely public sale until it went to conference——

MR. KRESEL: It did not have any provision at all.

MR. ANDERSON: Originally did not have any provision except to prevent waste. Then when the amendment asked by Mr. Palmer for the purpose of Americanization of American industry, whatever that may mean, and I think I understand what it means, it was simply to sell this property as your Honor would foreclose a mortgage on a railroad, and turn it over to another purchaser who could develop it free from the restraint of Courts and substitute in its place its value. The record shows that. That is a perfectly legitimate thing.

THE COURT: Do you mean in the construction of a statute a Court should be restricted by what Mr. Palmer said?

MR. ANDERSON: No, sir; I do not. I think it was absolutely illegal testimony on the subject, and I objected to it on that ground. But I am arguing now from my construction. I said I agreed with his view on that one point there.

THE COURT: I thought you were giving me that as an answer to my inquiry.

MR. ANDERSON: No, sir.

THE COURT: If Congress intended that the patent should be seized and not sold, why insert in the Trading with the Enemy Act authority to sell at public or private sale, or either?

MR. ANDERSON: Now, sir, I will answer your question. It was represented to Congress, and appears in this record, that when the Act of March 28, 1918, was passed there was no more talk about patents than if there was no such thing. I would ask that your Honor keep in mind that the question of patents never arose until after the war was over in the real sense. This whole thing was after

the war was over. All this very eloquent discussion by the distinguished gentleman who was on the stand, in March, 1918, about the Germans marching to the channel ports, was just one year before this took place, and at the time this transaction under review by this Court took place the Germans had surrendered and we were in control, the enemy on the run.

THE COURT: But won't you answer the question——

MR. ANDERSON: I am coming to the question. It was represented to Congress and stated by Mr. Underwood on the floor, which statement has been read here, and I will introduce another one to the same effect, that the Conference Committee put on this provision, that the President might direct a private sale for the reason that conditions might arise in which it would be advisable to make a private sale, where the expense would be too great for a public sale, where there was some particular circumstance so that you could make a sale for better terms in a private sale than you could in a public sale, and that since the amendment putting it in conference, and which was being earnestly fought, required the President personally to state his reasons for the private as distinguished from a public sale in writing, that it would be an adequate protection to the owners of this property. That was it in substance.

Your Honor will find we have introduced, and we will further introduce since the change of agreement on the record, Executive orders in which the President has ordered the sale of a few cases of tobacco or some bales of cotton, things of that kind, stating specific reasons why a private sale would be better than a public sale, and Mr. Palmer urged in one of his letters to the President

that it was very desirable, and it is in the record here, to have the power at least to make a private sale in some instances, because in qualifying directors in these various 30,000 corporations that he had, he would transfer a few shares of stock to the directors and sell it to them, and he could not sell it at public sale. Those are the reasons for the provisions in the act.

THE COURT: I am not concerned with the provisions for the private sale at this moment, because as I understand you, Colonel Anderson, you say that if this Chemical Foundation had been chartered under the exact terms and conditions under which it was chartered, and these patents had been put up singly by the Alien Property Custidian and bid in by The Chemical Foundation, there would be no difference in the nature of the monopoly thereby created, and therefore no difference in the voidability——

MR. ANDERSON: On that particular point, as to the anti-trust law, it may be that the purchase of any number of patents might have had that effect, but I do not mean to say that that would be analogous to the facts disclosed by this case in any sense. In that event the act provided that the Alien Property Custodian, with the approval of the President, could reject any sales, and if he saw a condition being brought about which he thought was dangerous to the welfare of the country, or in violation to its laws, he could have rejected the sale, just as he could have done in the Bayer case.

THE COURT: Then Congress did give to the President and the Alien Property Custodian the right to exercise some judgment for the protection, in the public interest and welfare of the country.

MR. ANDERSON: The next clause of the act after the one we have had under discussion says that the President may, stating his reasons therefor in the public interest, in writing, authorize the Alien Property Custodian to reject a sale and re-sell. Why? Because the purchaser may not be a satisfactory person, or because the price may not be satisfactory. There are any number of orders in which the President did authorize the rejection of a bid and a re-sale. Therefore, there was abundant protection against monopolistic condition, and the sale individually of these patents could have been adequately protected there, aside from the fact that the purchase individually from the Alien Property Custodian would have meant the absence of that combination, which is a largely essential element in the restraints of trade forbidden by the Sherman Act.

THE COURT: Then as I understand you, Colonel Anderson—I do not want to prolong this discussion, but want to get back to the testimony——

MR. ANDERSON: I am only too glad to answer your Honor's question the best I can.

THE COURT: Yes. But if I understand your answer to my inquiry as to what in your judgment would have been a better plan or a plan that would have prevented the monopoly, your answer is the non-sale of the patents. Am I right?

MR. ANDERSON: That is my primary answer, and my secondary answer is that if the Alien Property Custodian wanted to sell these patents, to have put them up at public auction in the manner that the law prescribed primarily and contemplated, at the proper proceedings to ascertain their value, and then, if they were bid in all by one person or in such a way as in his judgment

was prejudicial to the public interest, he could remedy that condition by having the bid rejected in the manner prescribed by the act, in whole or in part. He had absolute control over the bid, as much as your Honor has in the sale of a piece of real estate by a commissioner, which is nothing but an offer and not a sale until your Honor confirms it.

THE COURT: Then you would have him substitute his judgment in a private sale for the judgment of the President?

MR. ANDERSON: No, sir; if the President wanted a private sale and decided to authorize it, stating adequate reasons in writing, with knowledge of the facts, and conformed otherwise to the terms of the act, then that was a question for him to decide within the limitations of the act; and when he decided it, he must make a private sale and not destroy the property and give it away. He had nothing to do with the sale, he only had the power to authorize the Alien Property Custodian to sell, that is all. The President had no control whatever over the sale, except to do two things; one was to enter an order authorizing a private sale, by the Alien Property Custodian and not by himself, for he had nothing to do with it, and second, if the Alien Property Custodian presented to him facts to show that the bid ought to be rejected, authorize him to reject the bid and sell it again. But the sale is the act of the Alien Property Custodian in every instance; the President has nothing to do with that.

Congress vested in the Alien Property Custodian direct the power of sale, not the President, and not through the President. The President's powers and duties are very limited under that section of the act—very.

If I have answered your Honor's question to the best of my ability, I want to thank you for your patience, for I have probably been longer than necessary. But what plan might have been followed is not for me to say. All I am arguing is that this plan was not the right one and was not a legal plan.

THE COURT: If I could use that as a check in determining whether the present conditions under which the patents were sold was a violation of the act——

MR. ANDERSON: Of course it is a side-light, I recognize that, and that is the reason I tried to answer your Honor as well as I could.

THE COURT: I am prepared to rule on the question.

MR. KRESEL: I have nothing further to say.

THE COURT: You may continue your answer, Mr. Garvan.

MR. KRESEL: Just to remind you, Mr. Garvan, my recollection is that you were testifying—well, I have no[t] any recollection just exactly what you were testifying about.

THE COURT: He was testifying about the information——

A. (Continuing.) Yes, the activities of the German agents here as part of the espionage system of the German Empire. The point I had not got to is that from my information there were many evidences that this combination in Germany into the one cartel which was in progress as shown by the book of the Senate of 1910, was intended to and aimed, after it obtained a monopoly of the dye industry, to use that monopoly to assist each other competing industry of Germany with the manufacturers of the world, by refraining from giving the latest dyes, and so forth, to the carpet manufacturers of this country, they would

be in a position to offer advantages to the manufacturers of Germany.

Q. 100. May I stop you there a minute? You spoke of espionage? Did you have before you at this time any examples of such espionage, and if so, will you now mention them?

A. Yes, we had many. The principal one was the head of the chemical agents in this country.

Q. 101. Who was that?

A. The late Dr. Schweitzer, Dr. Hugo Schweitzer, who was an American citizen, and we found in his papers directions from the German Empire that he become an American citizen for their purposes here. We found that he had his number from the German Secret Service. I have forgotten it—nine hundred and something odd thousand. For the three years from 1914 to 1917 we found many evidences of his intense activity.

Q. 102. For example?

A. For instance, he was the first man to meet Dr. Albert when he came to this country, and he was the last man to bid him good-bye, and Dr. Albert left about two million dollars of the propaganda fund of the German Embassy in Schweitzer's hands to continue the disposition of. Dr. Schweitzer was the head of the German Publication Society for the purpose of putting out the literature of Germany. Dr. Schweitzer, at the request of the German Government, attempted to corner the phenol of this country. Phenol is carbolic acid, and it turns either to the right or left into aspirin or into picric acid, which is the base of the explosives.

Q. 103. Stop there a minute, please. Upon that last transaction, did you have any writing before you?

A. I did.

Q. 104. What was it?

A. I had the praise of Dr. Albert for the great ac-

complishment for the Fatherland which Dr. Schweitzer had accomplished in this country.

Q. 105. Now please look at page 511 of the Finance Committee report, and state whether or no that is an extract from the letter that you speak of?

A. It is.

MR. ANDERSON: Where is the entire letter, do you know?

MR. KRESEL: There again, Colonel, that letter is in the Alien Property Custodian's office, or in the Department of Justice. We do not know. We did not take these records, but they were introduced before this Congressional Committee.

MR. ANDERSON: By whom, Mr. Kresel? By whom were they introduced?

MR. KRESEL: It was introduced by Mr. Garvan when he was being examined, at page 511 of this hearing. Do you find it?

MR. ANDERSON: Yes.

MR. KRESEL: I now offer in evidence this extract from Dr. Albert's letter, at page 511.

MR. ANDERSON: I object to it upon the grounds stated already, and upon the further ground that it is only part of the letter, and the whole letter should be produced or all rejected.

MR. KRESEL: We state, your Honor, that we have not the possession of that letter. It is an official document in the possession of the Government.

MR. ANDERSON: To which I respectfully reply that the record as stated now shows that it was introduced by Mr. Garvan before this committee and must have been in his possession.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 80." (*See Exhibits, Vol. IV, page 2573.*)

MR. KRESEL: I read the extract, as follows. This is from Dr. Albert. (Reads letter.)

Q. 106. Now, Mr. Garvan, please proceed, but very briefly, if you have anything further to say as to the information you have with reference to espionage?

A. Dr. Schweitzer was the head of the group that purchased the Evening Mail as an organ of the German Government, and there were many, many activities.

By MR. ANDERSON:

Q. 107. Do you know that of your own knowledge, Mr. Garvan?

A. Yes, certainly, it is in the evidence in the case of Rumeley—the prosecution of Rumeley by the Department of Justice. All you have to do is look at the record of the trial, the testimony there.

By MR. KRESEL:

Q. 108. That is all right, if you are answering the Colonel's question. Now, will you proceed?

A. There was Dr. Scheele, another chemist.

MR. ANDERSON: I want to make this suggestion. If he is testifying as to the record in another lawsuit, I call for the production of that record.

MR. KRESEL: I thought I would like a ruling from your Honor on this. Our contention is that upon matters of this nature the best evidence rule does not apply. It is only where the question is directed directly to the issue involved in the case.

THE COURT: I ruled on that on the prior objection.

MR. KRESEL: I am sorry. I still understand Colonel Anderson to argue the contrary.

THE COURT: He is stating his objections; but I have ruled on it and made the same ruling here.

Q. 109. Will you proceed, Mr. Garvan, but be brief about it.

A. The activity of the other chemists in connection with the dye interests here. Dr. Scheele, of Bogota, New Jersey, was arrested as the manufacturer of the bombs which were attempted to be attached to our ships in the harbor of New York.

Dr. Strauss, the head of the—the name has escaped me now—under the guise of a chemical company in New Jersey, ran the German-Jewish propaganda, the propaganda among the German-Jewish people of this country.

There were many of those activities that were all rehearsed, or most of them, before the Overman Committee in the Senate of the United States.

Q. 110. What, if anything, did your investigation disclose as to whether or no the Germans had taken out United States patents covering dyes, chemicals and pharmaceuticals?

A. It showed that they had; that they maintained a very extensive organization, not only to patent their own inventions in Germany, but to observe the progress of science anywhere in the world and, if possible, anticipate that discovery of science by the taking out of what we call anticipatory patents.

Q. 111. What did your investigation disclose as to whether or no the Germans worked their United States patents in the United States?

A. They did not.

Mr. Anderson: Now, one moment, I object. If the question is as to what the investigation disclosed, I presume this evidence is intended to be a statement of fact, and if that is the case, the question of whether the Germans worked their patents in the United States cannot be proved by this witness. If it is intended to prove information that he had derived from sources that he has indi-

cated, why, your Honor has already ruled on it and covered my objection. If this is intended to prove what was a fact at that time, then it must be proved by people who know the facts.

MR. KRESEL: It is intended to prove, sir, primarily, what information this witness had before him. It may also be valuable upon the question of proving the fact, because, as I am going to proceed with this witness, I shall show that his information as to whether or no they worked these patents came from official sources, reports made by the Tariff Commission, for instance, to the Government, which is prima facie proof of the facts. But I have got to go step by step. Has the question been answered?

THE COURT: If it is a source of information, the evidence cannot be rejected. Whether you may use it for any other purpose would depend on whether you can show that you are entitled to use it for any other purpose. You may proceed.

MR. KRESEL: Very well; I will undertake that. Has the question been answered?

(Q. 111 and answer thereto repeated as above recorded.)

Q. 112. Did you or did you not convey to Mr. Palmer, as Alien Property Custodian, the results of the investigation that your bureau had been making?

A. I did.

MR. ANDERSON: One moment. I move to strike out that answer until I have had a chance to object.

MR. KRESEL: Yes, I consent to strike it out.

MR. ANDERSON: I object on the ground that if they want to show what they conveyed to Mr. Palmer, he must say what facts he reported and

not the conclusion that he conveyed information that his bureau had collected. That is a pure conclusion, and may cover twenty volumes of stuff. It may cover one volume; it may cover one fact; it may cover a million facts. If he wants to show that, he must show what facts this gentleman reported to Mr. Palmer, and how he reported them.

THE COURT: I think the objection is well taken and the witness should state the facts that he disclosed to Mr. Palmer.

Q. 113. Mr. Garvan, will you please state what, if any, facts you reported to Mr. Palmer with reference to the information that you had obtained in these investigations? Be as brief as is possible under the circumstances.

A. I reported to Mr. Palmer probably twice a week; at least once a week. I would go to Washington and report what I had learned in the meantime.

I reported to him that the Germans had a monopoly, before the war, of the German industry—of the dye industry; that they had taken out this great number of patents and had not worked them; that they used these patents as a club, not only to prevent the development of American manufacture, but to make our consumers buy goods from them alone and to crush out the competition of Switzerland or of any possible competition by any other country that might attempt to make them.

MR. ANDERSON: I move to strike out the evidence on the ground that it is a conclusion of the witness and not facts. Whether they used the patents in a certain way is not competent testimony, and was objected to very earnestly when I was undertaking to prove some similar facts, and probably soundly. As to the Germans' undertaking to create a monopoly is a conclusion. As to

whether they were excluded from Switzerland is a conclusion. If he reported any specific fact to Mr. Palmer, then it would come within the question; but the facts and not his conclusion from the facts is the thing that must have been reported.

THE COURT: Is there a dispute between counsel as to the situation with respect to the German dye and chemical industry in America, in February, 1919, and April, 1919, and for five years preceding? It seems to me that this case is getting long enough without differing on facts as to which there can be no dispute. It ought to be well known to the Government of the United States and to this defendant precisely what that German chemical and dye situation was in this country ending with the date of the last assignment of these patents, whenever that was. If that is in dispute, let us have it on both sides. If there is no dispute, why add thousands of pages to this record to determine it. Cannot counsel agree upon it?

MR. KRESEL: I am very glad that your Honor has made the suggestion. I should not think that there would be any dispute. The Tariff Commission reports and the Norton report which I put in this morning, which are official reports, state the situation exactly.

THE COURT: I do not know what the situation was, and I am not suggesting that you agree; but if there is no reason for disagreeing, then why take up the time of all of us for a week and add thousands of pages of testimony for the Appellate Courts to review?

MR. KRESEL: I think your Honor is entirely correct. I thought that Colonel Anderson would not object to my simply asking the question whether he passed the information on, because that

would have avoided this long answer. But if Colonel Anderson insists, then I have got to go on.

MR. ANDERSON: If your Honor please, if this evidence has any materiality whatever, which I cannot see, but which I recognize others may see, then it is of sufficient importance to investigate it. If it has no materiality, if we are just going to deal with conclusions and have argument from gentlemen on the witness stand, then it is a waste of time. Therefore, I submit that we must either take the evidence legally or not take it at all. The case ought not to proceed that way. I frankly say, in answer to your Honor's question as to what was known by the Government of the United States, I cannot say, because it is too large an institution.

So far as I am concerned, I have regarded all this as utterly immaterial in this case, and have not wasted my time studying it. I do not know a thing about it. I assume the Germans did all they could to protect their interests and develop their position, just as the English and the Swiss and the Americans did; and that is all I know about it.

THE COURT: It seems to me, Colonel Anderson, that the people making the sale of these patents had to do it either with intelligence or mechanically, if they were sold, and the Trading with the Enemy Act authorized their sale. If this was a purely mechanical proposition and the Alien Property Custodian in making the sale, or the President in authorizing a private sale, did not intend to use any judgment or wisdom or consider the welfare of America, not only the immediate welfare, but the future and military welfare and

possible independence of America, that is another thing.

If they were entitled to consider (and I am not saying that they were. I understand that your contention is that no such power was authorized by Congress when it passed the Trading with the Enemy Act or the amendments thereto), inasmuch as we have admitted all evidence under the general rule, it seems to me this evidence will have to go in. I do not mean the conclusion of what he stated to Mr. Palmer, because he will have to state the facts; but I cannot see how I can now say that the matters which were necessary to be considered for the preservation or protection of America (not any specific American industry, possibly, but the American Government) with respect to the German chemical and dye patents and industry, might not be material.

I do not want to get into a discussion of all those questions. I will make a specific ruling that this witness, in stating what he told Mr. Palmer, his superior, will have to make a statement of fact and not a conclusion of fact.

Q. 114. Mr. Garvan, you have heard the Court's ruling. Will you now state what facts you told Mr. Palmer with reference to the investigation made by you and your department of the German relation to the chemical industry of the United States? I will put it that way. And please do it as briefly as possible.

A. I told him that the German Big Six had a monopoly of the organic chemical industry of the world.

Mr. Anderson: I object and move to strike out the answer.

MR. KRESEL: Your Honor, I do not think that is a conclusion.

THE COURT: That is not in the ruling. I am not concerned here as to whether he detailed his own conclusions to Mr. Palmer; but the thing that this witness has now been asked to state, and which I have ruled that he can state, is what he told Mr. Palmer. If those were conclusions, then he may show in summing up that they are unimportant; but it is the same ruling that I made with respect to Mr. Palmer and what he told the President.

Q. 115. Will you proceed?

A. I told him that through that monopoly the progress in German business had been made which placed her in the economic position that she had in the world before the war; that her economic structure was based on the strengthening and developing of all her industries by that organic chemical industry.

I told him that her bringing the war was based upon that organic chemical industry; that it was not until the fall of 1913, when her dye plants had perfected their Haber process plants and made them independent of the Chilean nitrates, so that England's blockade would not be feared, that she began to seriously prepare for the final steps before the declaration of war; that she could not have carried on the war for but a few months had it not been for the developments of the German dye factories; that the poison gas of the war had been prepared and worked out in the German dye factories; that the greatest proportion of her ammunitions during the war, with which she fought the war, had been made along the Rhine and the Ruhr in the organic chemical industries of Germany; that it was the power with which she was waging the war; and that the next war would begin

where this war left off, and would be to an even greater extent a chemical war than the past war had been.

I told him that we had for forty years neglected the organic chemical industry in this country, both in our schools and in our colleges, and that public opinion had no realization of the great and overwhelming relation of this question to our life.

I told him of the history of salvarsan and what the suffering had been in this country because of our dependence upon Germany for that drug, and the same as to luminon, which was the only known alleviative for epilepsy that we had. I told him that our doctors were insisting that we be freed from the domination of another country; that I had interviewed many of them in the Government service, and the men who had had to do with our troops, and so forth, and so on, and they had described to me conditions which they insisted should never exist again. I talked to him again and again.

MR. ANDERSON: Will you state about what time?

MR. KRESEL: I am coming to that.

MR. ANDERSON: Before you ask the next question, in order to get the record absolutely straight, I move to strike out each statement in the foregoing answer and each sentence thereof as pure hearsay and being otherwise incompetent, for the reasons which have been stated already in the objections to the question and which will not be repeated. I understand your Honor's ruling. I merely want to note an exception.

THE COURT: Motion denied.

Q. 116. Will you state, Mr. Garvan, please, the earliest date that you can recall, when you discussed

with Mr. Palmer these German patents covering the dye and pharmaceutical industry?

A. My recollection would be that it was about January, 1918. In the investigation of the Bayer Company we found that all their patents were not held by the Bayer Company, but that they were in another separate company, the Synthetic Patents Company; and that was our first introduction, as I remember it, to the general discussion of the patents held by the Germans in the organic chemical industry particularly and the dye industry.

Q. 117. Do you remember the date of the sale of the Bayer plant?

A. Yes, sir.

Q. 118. Do you remember what date it was?

A. Yes, sir; December 12, 1918.

Q. 119. What happened that day with reference to that sale?

A. On that afternoon I was in New York in my office at Forty-second street; that is, in the A. P. C. office at Forty-second street. The name of the purchaser was telephoned to me from Rensselaer, where the sale took place at the plant of the Bayer Company. I took out the corporation directory to look up who the Sterling Products Company were, as they had never disclosed themselves as a possible bidder before the sale. We knew nothing of them.

Q. 120. Was the Sterling Products Company the successful bidder?

A. The successful bidder. I looked them up and found that the Board of Directors were all German names.

Q. 121. You need not mention the names unless counsel insists.

A. As a matter of fact, in justice to them, I should say that they were the finest type of Americans down

on the border line of West Virginia and Ohio for over a hundred years. But their names were German. They were unknown to me. That started a discussion between Mr. Choate and myself and others at the possibility of having sold that chemical plant to people who might turn it back to the Germans or people who might then go on and buy the properties of the other five agencies who had no real estate, no assets at all except some Liberty bonds, which would not be sold, and furniture and so forth of sales agents.

Q. 122. You spoke of agencies. What agencies are you now referring to?

A. The Kalle, the Badische, the Cassella and the Berlin, the Big Six.

Q. 123. The United States agencies?

A. Their United States agencies here. That was the inception of the idea of The Chemical Foundation that afternoon, the shock that it gave us when we saw that we had sold that company to a bunch of stockholders whose directors all had German names. It was an alarm which was unjustified, but it started us to look into the general situation.

Q. 124. Well, did you discuss the matter with Mr. Palmer?

A. I did, immediately. I went to Washington either the same or the next day.

Q. 125. Please state briefly what discussion there was between yourself and Mr. Palmer with reference to the Bayer sale and the relation of that to the outstanding German-owned United States patents to the organic chemical industry?

MR. ANDERSON: Please have him state the time, place, and persons present.

Q. 125 (continuing). Yes, give the time, the place, and the persons who were present?

A. My recollection is that it was within forty-

eight hours after the Bayer sale, on December 13th, 14th or 15th, possibly, after the sale.

Q. 126. 1918?

A. 1918.

By The Court:

Q. 127. Where, and who was present?

A. In Washington, and, as far as I recall, there was no one present but ourselves.

By Mr. Kresel:

Q. 128. Please give us the conversation?

A. I told him of my experience of the afternoon and the line of thought which it had developed in me. I told him of the fact that the Badische agency had changed hands, that is, that they had formed a New York corporation to take over the office furniture; that they had liquidated the old Badische Company, so that when we came to sell the Badische Company there would be nothing there to sell except the cash in the treasury, Liberty bonds, and the patents.

I told him that the same thing was true as to the Berlin; to a lesser extent, I think, of the Kalle. I think they had a few goods on hand. But none of them had any plants. I said that heretofore we had looked up the patent situation with the idea that it would be cleaned up by selling the Big Six agencies over here, but it was perfectly apparent that the situation had changed now and that the purchaser of the Bayer Company, having paid $5,000,000 for that property, which was a great real estate property, a great growing factory with its great product aspirin, was in a position where, for a very moderate expenditure of money, he could come along and buy the patents which were put up on the five or six German agencies that were coming on for sale, which he would have, together with the 1200 patents which had gone with the Bayer Company, without any assurance on our part that there

would ever be any development, that they would not be transferred to the Germans after the war, and that possibly all our work, as far as the creation of a chemical industry and assurance of it in this country was concerned, might be in danger. But there certainly would be that danger if we ran the risk of having the one purchaser of the Bayer Company, where there were real assets, in a position to come right along at our sales and buy up the patents as they were sold, with the remaining agencies and become the sole owner of Germany's hold on America with no power of the Government to control the use of it by that purchase.

He said to me that he had been thinking the same thing or along similar lines. He told me to go and see Mr. Choate, who was our expert on those things, and told me to consult Hoguet, who was a patent man; that neither Choate nor I knew anything about patent law; and to go and see what we could do to formulate some plan; that we must avoid a monopoly.

Q. 129. Is that what he said?

A. Yes, that we must avoid the monopoly; that the President had insisted that in the sale of this property we should be careful to not tend toward intensifying even any apparent monopoly that there existed in the country or to create any monopoly. That was the policy of the office.

He said that we must make sure that any big company in the dye business did not get a chance to crush out the growth of a general and broad industry by getting possession of the patents which might control the development.

He told us to go off and work out something and come back and report.

Q. 130. Did you then consult with others about the situation?

A. I did.

Q. 131. With whom did you consult?

A. I consulted with Mr. Choate. I consulted with Mr. Hoguet. I sent for Dr. Herty who was at that time the editor of the Mechanical & Chemical Engineering Magazine. I consulted with many in the industry. I consulted with Dr. Matheson who had been the Cassella agent for some thirty odd years but at that time had become an American manufacturer and was, I think, one of the largest if not the principal owner in the National Aniline. I consulted with Mr. Poucher who was the representative of the duPont Company. I consulted with Mr. Merz of Heller & Merz. I consulted with Mr. Jeffcott of the Calco Chemical Company. I consulted with Mr. Wigglesworth of the General Chemical Company. I consulted with every one—I think Dr. Bogart of Columbia—I am not sure as to whether I did on this specific point—but every one I could think of that could give us any light on the subject.

Q. 132. Please state whether, after these conferences with the representatives whom you have mentioned, you had further talks with Mr. Palmer upon this subject?

A. I did. I went back to him and told him that we talked over some kind of a trustee corporation. First we discussed the Government buying the patents, but that did not seem to us to promise any progress, that is, to make these dyes under these patents; that they only represented some five per cent of the dye production and to make them meant millions of dollars of research and large investments of capital; and that the industry said that they would absolutely refuse to invest their millions in research or development with the patents in a condition where, if there came a wave of sympathy after the war, they could be given back to Germany, and they be left with their in-

vestment and their plant and the control of them back in German hands.

I told him that the industry said that they already had licenses from the Federal Trade Commission; that both of the biggest companies had taken out almost a blanket license for these vat dyes, which are the only ones that are of moment in the patents, and that they were loathe to go ahead with any scheme as they felt themselves protected by that license. Both the duPonts and the National Aniline had licenses from the Federal Trade Commission.

I told Mr. Palmer also that Mr. Matheson told me that he had been a bidder for the Bayer Company and that he had his experts value the patents.

MR. ANDERSON: I object to this, if your Honor please. If they are going to try to prove this as a fact, I want to object to it because it is going into valuation of property and I do not think hearsay evidence is admissible on that subject.

MR. KRESEL: Why not, Colonel?

MR. ANDERSON: Of course, I am taking the position that none of this evidence is admissible on that ground, that is, hearsay. But when you go into the question of value, which is a question on which there apparently seems to be some difference, it does seem that if Mr. Matheson had any knowledge of value, he could be called. Before determining the value of the Bayer patents, you would have to have some idea of what they were; and what Mr. Matheson may have told Mr. Garvan and Mr. Matheson's relations with the property are not known, and what Mr. Garvan told Mr. Palmer is certainly no evidence of value.

MR. KRESEL: But, your Honor, when you come to consider the question of value, we have a right to say what information Mr. Garvan and Mr. Palmer had upon that; and if Mr. Matheson

went to Mr. Palmer and said, "Mr. Palmer, these patents are worth a million dollars", that is material to the issues here. We do not have to call Mr. Palmer or Mr. Matheson. And, if Mr. Matheson said, "They are not worth a cent," we have a right to show that.

If you want to call Mr. Matheson to show that he did not say that, you are at liberty to do it. All we are showing is what information we had. We are entitled to do that.

MR. ANDERSON: I have noted my objection.

THE COURT: The same ruling as I made in the case of Mr. Palmer that the information which he gave to the President was admissible. I will likewise admit any information that was given to Mr. Palmer with respect to the patents.

This brings us to the recess hour. We will take a recess until one o'clock standard time.

(Recess until one o'clock Standard time.)

AFTER RECESS.

Q. 133. At the time we took the recess, Mr. Garvan, you were telling of a conference with Mr. Palmer, and you had reached the point where you were telling him about Mr. Matheson and what he had said with reference to the value of the patents. Now, have I given you sufficient connection with the other?

A. Yes.

Q. 134. Will you proceed now?

A. Mr. Matheson told me about the license that they had taken out from the Federal Trade Commission, and then I talked with him about the Cassella patents, which he knew about.

THE COURT: Just a minute. The witness is

now saying he talked with Mr. Matheson. Your inquiry was as to what he told Mr. Palmer?

Mr. Kresel: Exactly.

A. (Continued.) I told Mr. Palmer as to what Mr. Matheson had said. He said that he had been a bidder, or his concern had been a bidder for the Bayer Company, where 1200 patents had been sold with the plant. He had had his chemical experts value those patents before he bid, and they had valued those patents at $10,000. He did not see why they should pay a large sum for the remaining patents; that there was nobody who knew how to work them; that they would have to spend millions of dollars in research to rediscover how to work them, and the most they would give them would be freedom to develop without interference after the war by the Germans, but if I could induce all the industry to go into the thing, why, they would go along as a patriotic duty and put up whatever was their share, whatever they all decided between them was their share of the underwriting.

Q. 135. Have you stated substantially all your conversation with Mr. Palmer on this occasion?

A. I told him also that I had talked with all the different representatives of the industry.

Mr. Anderson: Just state when that appeared, will you?

A. (Continuing.) I should think that that probably was somewhere along after the middle of January.

Q. 136. What year?

A. Of 1919. I told him that I thought the industry would go along with his ideas, and he then stated to me the conditions that we would have to exact from any corporation that was to be formed to take them over.

Q. 137. What did he say about that?

A. He said that there would have to be non-exclu-

sive licenses open to everybody, either at present in the chemical business or who might go into it in the future; that it must be absolutely iron-clad against any possibility of combination or monopoly on anybody's part.

He said that a free license would have to be given to the Government, both releasing them for past infringement, and to allow them to either manufacture themselves in case of war, or for use in peace, or have manufactured for their own use.

He stated that it must be a non-profit-making institution; it must be so organized that no individual got any profit out of it, except what they earned by developing the industry and selling the products which the patent would allow them to sell.

He said the stock would have to be trusteed and would have to be trusteed in the name of the sales committee who had been with him throughout the war and who fully understood the necessity of guarding against the return of these properties to the Germans.

Q. 138. After this talk, did you again have conferences with the representatives of the industry?

A. I did.

Q. 139. Can you place the date? How soon after this talk with Mr. Palmer?

A. That was after they had been down and talked to Mr. Palmer. It was some time in February, the early part.

Mr. Anderson: Now that the subject has been changed may I interrupt just a moment. I know your Honor's ruling. I merely want to move to strike out the evidence of this witness as to any statements by Mr. Matheson as to value, and also to strike out the alleged conversation between himself and Mr. Palmer, and Mr. Palmer's conditions.

As to the first part of the motion, it is, I

think, covered by my objections already made. As to the second part, these negotiations, whatever they are, have been merged into agreements which are in writing and which speak for themselves. This motion is based upon these grounds, as well as the general and specific objections heretofore taken. I understand the situation. I merely want to make the record clear.

THE COURT: I understand that the allegations might conceivably make a conspiracy. I do not say that they do, or will, but it is possible to conceive that they might. For that reason the objection is overruled and the evidence will be received.

MR. ANDERSON: It was not so intended, sir. I will say that.

THE COURT: I mean, Colonel Anderson, the reasons leading up to this transaction; not your reasons.

MR. ANDERSON: Oh, I misunderstood your Honor.

Q. 140. Will you state now what conference you had with the representatives of the industry early in 1919, as you say?

A. At one of the next meetings——

MR. ANDERSON: Mr. Kresel, when you say "representatives of the industry", will you have him say who was present, when and where, and who spoke?

Q. 140. (Continuing.) Please state as near as you can recall who was present and where the conference took place and when?

A. It was sometime along the middle of February. We had a very large meeting at my office.

Q. 141. Where?

A. At 42nd Street, New York.

Q. 142. Please state as near as you can recall who was present?

A. It would be impossible for me to state them all.

Q. 143. State as many as you recall?

A. As to who was present, I have only my recollection. I have a recollection of Mr. Poucher and Judge Laffey, two or three representatives of the National Aniline—which ones they were I would not be able to state because I saw a great many of each company. I think Mr. Jeffcott of the Calco Chemical Company was there, some representatives of the Newport Chemical Company, some representatives I think of Sherwin-Williams; I think Mr. Merz; I think Mr. Wigglesworth; I think Mr. Henry Howard, secretary of the General Chemical Company. There was quite a large group of them at that meeting. Mr. Choate was there, I think. I am positive Mr. Choate was and I think Mr. Hoguet was. I am not positive.

Q. 144. You say that this meeting took place in your office on 42nd Street?

A. Yes; the Alien Property Custodian's New York office.

Q. 145. Will you now state briefly but substantially what took place?

A. I told them the terms that Mr. Palmer had laid down.

Q. 146. Please state just what you said to them?

A. I told them that there must be non-exclusive licenses and that the stock must be trusteed for the life of the longest patent in the hands of the Sales Committee; that it must be a non-profit making proposition; that they must give the Government a free license. In the discussion they proposed that the license fee be so adjusted that when the preferred and common stock was paid back there be no license fee. I said, "No," that Mr. Palmer exacted that they al-

ways pay a license fee but that when the stock was paid back, the balance would be devoted to the general development of chemical education and the general development of chemistry in the war. They had one or two other proposals. What they were I am not sure. And we discussed the price.

Q. 147. What was said about that?

A. They discussed the elements that went in to make it uncertain what their value was in view of the conditions that were being imposed.

Q. 148. What was said about that and by whom if you can state?

A. They said that of course any one of them individually would not buy patents under any such condition as that; but if the Government made this proposal to them and urged them to do it, as a spirit of the war was still on, they would carry on for as much as their proportion called for, as they all agreed each should do; but that individually, of course, with that form of a conveyance, it offered no business attraction to any one of them individually, and they agreed that they would give $250,000 and supply $250,000 of working capital.

Q. 149. Could you state who it was that made the statements on behalf of the conferees?

A. No, I could not. It was a general discussion by everybody.

Q. 150. Do you remember any particular persons making any statement?

A. No.

MR. ANDERSON: Has he fixed the date?

MR. KRESEL: Yes, about the middle of February, 1919, as I recall it.

THE WITNESS: About the middle of February.

Q. 151. What did you say or what did Mr. Choate say about the price, or anything else?

A. Well, Mr. Choate after the discussion went on agreed that that would be a fair and reasonable price.

Q. 152. Did he say that?

A. He did.

Q. 153. What did you say?

A. Well, I agreed that it would, too. It was apparently the most we could get, too.

Q. 154. Then did you after that conference have another talk with Mr. Palmer?

A. I did.

Q. 155. What did you say to him then and how long after this conference about the middle of February?

A. Within a day or two.

Q. 156. Where was it that you saw Mr. Palmer on that occasion?

A. In Washington.

Q. 157. Please state what you said to him about this subject?

A. I told him we had had a conference, there had been many of the manufacturers there, both from the Dyes Institute and from the manufacturing chemists, which were the chemical concerns outside, and that they had accepted his terms, his conditions, and that they had made the proposal of the price of $250,000, and Mr. Choate, Mr. Hoguet and myself thought it was a fair price, and he said, all right, he would accept it.

Q. 158. After that conference did you have another talk with the representatives of the industry?

A. Yes, I reported back to them.

Q. 159. What did you say to them?

A. I told them that Mr. Palmer had accepted their offer.

Q. 160. Can you fix about the date when you conveyed that information?

A. No, it was within a few days of that time.

Q. 161. Do you remember when the charter of The Chemical Foundation was filed?

A. Filed, I think, February 19th, if I am not mistaken.

Q. 162. What year?

A. 1919.

Q. 163. You spoke of these gentlemen who were present at the conference saying they would underwrite the amount of money necessary. Was there an underwriting necessary?

A. Mr. Palmer stated to me that he wanted the stock as widely distributed as possible, and in our conversation we decided that nobody could hold more than two shares of common stock, and our aim was that they would hold eight shares of preferred stock, that is $1,000, and that it would be divided into 500 concerns holding it. So that in my talks with them they agreed that they would attempt to distribute the stock as widely as possible in conformity to that expressed idea of Mr. Palmer, but that they would get together the industry and would underwrite the $500,000.

Q. 164. Do you know what steps were taken to distribute the stock as widely as possible?

A. Yes.

Q. 165. What was done?

A. We circularized the 3,000 firms throughout the United States in whom we thought it would excite any interest.

Q. 166. Will you stop there a minute. Have you a list of the firms which were asked to become stockholders?

A. I have.

Mr. Kresel: Colonel, I have this list here. I do not want to burden the record with a list of 3,000 names and addresses, but it is available to you if you desire to examine it. I will mark it for

identification, if you like, or I will put it in the record, if you like, just as you say.

MR. ANDERSON: I would like to know when this circularization took place.

MR. KRESEL: Yes, I will inquire.

Q. 167. Mr. Garvan, will you state how soon after the organization of The Chemical Foundation the industry was circularized to endeavor to distribute the stock as widely as possible?

A. From recollection I would say early in March after we got started. But the circular itself bears the date. I could find out from our own records.

Q. 168. Look at this (handing witness paper). Is it a copy of the circular that went to each?

A. Yes, that is right. Then it must have been much later. According to that, it is July.

MR. KRESEL: This I will offer in evidence—a copy of the circular.

THE WITNESS: There was a prospectus went with that.

Q. 169. Yes, but that is already in evidence, however.

A. Yes.

MR. KRESEL: I would like to have this marked.

Received in evidence and marked "Defendant's Exhibit No. 81." (*See Exhibits, Vol. IV, page 2575.*)

MR. KRESEL: Colonel Anderson agrees with me that it is not necessary to put this long list of names and addresses into the record, but I think I shall have it marked for identification.

(Marked for identification "Defendant's Exhibit H.")

MR. ANDERSON: I assume it is not necessary for me to state that all this preliminary negotiation which the witness has described is not only

subject to the general objection, but the specific objection which I stated heretofore.

THE COURT: Or subject to all applicable objections, general and specific, heretofore made.

Q. 170. Mr. Garvan, have you had prepared a list of the stockholders of The Chemical Foundation showing the businesses that they are in?

A. I have.

Q. 171. As of what date is this?

A. Down to the present date. I do not think there has been any change, hardly, since the beginning.

Q. 172. Will you produce that?

A. I do. (Handing counsel.)

MR. KRESEL: I will offer this in evidence.

MR. ANDERSON: It does not state the number of shares preferred and common.

MR. KRESEL: You have that in your list which is already in evidence. Isn't that right, Mr. Galloway?

MR. GALLOWAY: Yes, I have that.

MR. KRESEL: May this be marked in evidence?

Received in evidence and marked "Defendant's Exhibit No. 82." (*See Exhibits, Vol. IV, page 2576.*)

Q. 173. Mr. Garvan, do you know whether or not the stockholders of The Chemical Foundation are members of the Dyes Institute?

A. Some are and some are not.

MR. ANDERSON: The stockholders of what date, Mr. Kresel, please? Would you make it a little more specific?

MR. KRESEL: I will try to, Colonel.

Q. 174. Mr. Garvan, this Exhibit 82, as I understand your testimony, is a list of the present stockholders?

A. Yes.

Q. 175. Has there been any material change in the

stockholders or the amount they hold since the organization of the company down to date?

MR. ANDERSON: I must object to the form. If there is any change it can be pointed out.

Q. 176. To your knowledge, has there been any change in the stock holdings of the various stockholders?

A. I think there was a change right after we were organized, before the distribution took place, but since July, 1919, I would say there was no material change. I will verify it and give you every change by tomorrow morning, after looking at the books. But as a result of this circularization we spread our holdings among 158 and diminished the larger holdings by so much as we were able to sell to the others, but nobody ever had any more than two shares of stock, common stock, there never was any deviation from that rule.

Q. 177. Do you know how many of the concerns underwrote that?

A. I do not remember, no.

Q. 178. The exhibit is in and that will show?

A. If it is material, I can get it for you by tomorrow morning.

Q. 179. It is in. What was the total amount of capital that was actually paid in by the stockholders?

A. $428,900.

Q. 180. In other words, no more than that has ever been paid in?

A. No, sir.

Q. 181. Can you state whether all of the preferred stock has been issued or all of the common stock?

A. All of the preferred, but only as much of the common as double the number of stockholders.

Q. 182. In other words, there has been $400,000 of preferred stock issued?

A. $400,000 preferred.

Q. 183. And only $28,900 of common?

A. Yes, among 156 stockholders. So some must have only one share of common.

Q. 184. In whose name is the common stock on record in your company?

MR. KRESEL: We will produce the books if you like, Colonel; but I do not believe there is any dispute about that.

A. The names of the five trustees.

MR. ANDERSON: Name them, please.

Q. 185. Will you give the names, please?

A. At the present time, Cleveland H. Dodge, Judge Ingraham——

Q. 186. George L. Ingraham?

A. George L. Ingraham; Benjamin Griswold, of Baltimore; Otto H. Bannard, of New York City; and Bradley W. Palmer, of Boston, Mass., of Story, Palmer, Thorndike & Dodge.

Q. 187. You state "at present." Had there been any change in the voting trustees?

A. Mr. Ralph Stone, of the Detroit Trust Company, was originally a trustee, but he could not make the trip from Detroit to New York, and so asked to be relieved.

Q. 188. And Mr. Bradley W. Palmer took his place?

A. Yes.

MR. ANDERSON: Could you state the date of the change?

Q. 189. Can you give us that, Mr. Garvan?

A. I cannot. I will in the morning.

MR. ANDERSON: If you have got the record here, let him give it to us now.

A. (Continued.) About a year ago; a year and a half ago. I would say it was a year ago last January. That would be my recollection.

Q. 190. Mr. Garvan, there has been read into the record here an extract from the minutes of the Ad-

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visory Sales Committee of the Alien Property Custodian, from a meeting held by that committee on the 14th of February, 1919, which is to the effect (I am not quoting the exact words) that you appeared before the committee and explained the plan for the disposition of the German patents, and that the plan was approved in principle. I think that is the substance of the statement in the minutes. Do you recall appearing before the committee?

A. I do.

Q. 191. Do you recall who was present there? I mean, what members of the committee?

A. Mr. Ingraham—Judge Ingraham, Mr. Bannard, Mr. Dodge, and Mr. Griswold, as I recollect it. I do not think Mr. Stone came on for that meeting.

MR. KRESEL: Yes, that is right, according to the minutes, Colonel.

Q. 192. And you were present?

A. Yes.

Q. 193. Who else? Do you remember anybody else being present?

A. The first part of the hearing, whether he stayed through or not, Mr. Palmer himself was present. He had another case on there on the calendar that day.

MR. KRESEL: I desire to read in, if your Honor please, from these minutes from which the Government has already put in a portion, the following:

"Minutes of meeting of Advisory Committee on Sales, held at the New York office of the Alien Property Custodian, 110 West 42nd Street, New York City, on Friday, February 14, 1919, at ten o'clock A. M.

"Present: Messrs. Otto T. Bannard, George L. Ingraham, Cleveland H. Dodge, Benjamin H. Griswold, Jr.; Ralph Stone, excused.

"By invitation: Honorable A. Mitchel Pal-

mer, Alien Property Custodian; Messrs. F. P. Garvan, Director Bureau of Investigations; Ralph J. Baker, Assistant General Counsel; Joseph F. Guffy, Director Bureau of Sales; F. X. Anglin, Assistant Director Bureau of Sales; H. D. Green, Assistant Chief Division of Insular Possessions; George P. Wagner, Secretary to the Committee."

Q. 194. Now please state, Mr. Garvan, what, if any, statement you made to the committee at this meeting with reference to the disposition of the German-owned patents?

A. I made a general statement of the whole situation.

Q. 195. State as briefly as you can——

A. I would have to go right over the same ground again.

MR. KRESEL: Perhaps there will be no objection to my asking specific questions about it.

Q. 196. Did you tell the committee of your conferences with Mr. Palmer and with the representatives of the industry with a view of selling these patents?

A. I did.

Q. 197. Did you tell the committee what plan Mr. Palmer had proposed and which you and Mr. Choate and Mr. Hoguet had perfected?

A. I did.

Q. 198. What did you say to the committee upon that particular subject? I mean, what the plan was?

A. I told them that Mr. Palmer wanted to trustee these patents so that there would be no danger of their ever going back to Germany; that there would be no danger of the substitution of an American monopoly for the German monopoly; that everybody would get a fair deal, little fellows and big fellows alike; that the license fees would be equal on any product to one and all, whether they had put up money or not; and that we wanted them to become trustees to insure those

terms of Mr. Palmer being carried out beyond peradventure of doubt. I knew that they had had two years of war work and most of them were old men, but asked them to accept that additional burden of becoming trustees of that institution.

Q. 199. By the way, may I stop you there to inquire whether any of these gentlemen ever received a penny for their services?

A. Certainly not.

Q. 200. Either from The Chemical Foundation for acting in this capacity or from the Government acting on the Advisory Sales Committee?

A. Absolutely no, either by way of expense account or any possible way under the sun. They were men of very mature years whose lives had already been rounded out, and had no interest whatsoever in anything connected with these German properties. Judge Ingraham was the leader of our Bar for thirty years and the arbiter of the ethics of New York lawyers and judges for the last twenty years.

Q. 201. While I am on this point, I omitted to ask you on Friday whether in your capacity as director of the Bureau of Investigation of the Alien Property Custodian you received any compensation?

A. A dollar a year.

Q. 202. I am sorry to have interrupted you. Will you proceed now to state more fully what you told the Advisory Sales Committee as to the plan and whether you told them about the price and whether you told them the condition?

A. Of course, it is impossible for me to say with what detail I went into the story at that time.

Q. 203. I understand.

A. I know at that time I told them that I was to be one of the directors; that I had consented to go that far; and that was in urging upon them to take up those

additional burdens. I told them of the conditions that necessitated it. Of course, they had sat there for two years and heard the Bayer case and all these other cases and it was not necessary to tell them a whole lot.

Q. 204. What did you tell them about the conditions that Mr. Palmer insisted upon that would surround the sale?

A. I thought I told you that.

Q. 205. You did not, fully.

A. I told them we would have to give the Government a free license; that we would have to give everybody else a license; that it could not be a money-making proposition for anybody; that six per cent. on their money was the most that anybody could get who put money into it and that its future depended entirely upon the progress which American industry might make, upon the amount of money that they were willing to put into their plants and into their research to develop it. I undoubtedly told them about salvarsan. I did to most everybody. I told the story of salvarsan to them. What other details I went into I do not know at this time.

I do remember that they asked at that time that Judge Ingraham, who was the only lawyer among them, take charge of looking after the trust agreement under which they were to serve and see to it that it lived up to the desires of Mr. Palmer and that it was just to the Government and to all concerned.

Q. 206. You mean the voting trust agreement?

A. The voting trust agreement.

Q. 207. And do you know whether Judge Ingraham did take or examine into (I will put it that way) the form of the voting trust agreement that was finally adopted?

A. Judge Ingraham in connection with Gray, of Delaware, as I understand it. I knew I had nothing to do with it.

Q. 208. Who were the directors of The Chemical Foundation when it was first organized?

A. Three young men in the Delaware Trust Company. I don't remember their names.

Q. 209. And after they had resigned, who succeeded them?

A. Myself, Mr. Corbett and Mr. McKay, Colonel Douglas I. McKay.

Q. 210. Who was Colonel McKay?

A. Douglas I. McKay was a member of the general staff of the United States Army during the war and had retired and returned. He was a civil engineer, as I understand it with J. G. White & Company. He had been a man of means and a man of considerable position.

Q. 211. Has there been any change in the directorate?

A. Mr. McKay served without pay during the entire time he was there. Mr. Corbett was the Secretary and Treasurer. He at that time was Vice President of the Central Trust Company and for about a year and a half, up to the time that the work became so much that he had to resign his position from the Central Trust Company he received no pay. And, of course, I received no pay.

Q. 212. Has there been any change in the Board of Directors?

A. Yes, sir.

Q. 213. What change?

A. Mr. McKay resigned and we elected Mr. Polk, but then thought better of it; thought that he would not be willing to serve; and we then elected a young lawyer who worked for us who was there on the job all the time, a young man named Haaren. Otherwise there has been no change. He was made secretary, Mr. Corbett remaining as treasurer.

When Mr. Corbett resigned from the Central

Trust Company, he served at a salary, I think, of either $10,000 or $15,000 a year for a certain time and since then, for a year and a half, I think, has again given his services for nothing.

MR. KRESEL: If you would like the exact dates of that, Colonel, I will furnish them.

Q. 214. I want to make sure that I have all the changes in the officers. There has been no change of the office of president?

A. No, sir.

Q. 215. You have been president right along?

A. Yes, sir.

Q. 216. Mr. Corbett has been Treasurer right along, is that right?

A. Yes. I missed one change there. We elected Mr. Miller a director at one time.

Q. 217. You mean Mr. Thomas W. Miller?

A. Yes, I think he succeeded Mr. McKay. Yes, he succeeded Mr. McKay.

Q. 218. And did he serve?

A. He did not.

Q. 219. Among the officers, Mr. Corbett was secretary and treasurer and then resigned as secretary and was succeeded by Mr. Terry, did you say.

A. Haaren.

Q. 220. And are those the officers now?

A. Yes.

Q. 221. You president, Mr. Corbett treasurer and Mr. Haaren secretary?

A. Yes.

Q. 222. Is there a vice-president?

A. I do not know. I wouldn't want to swear to that unless I looked it up. Mr. Corbett may be. I do not know.

Q. 223. To your knowledge, has any of the directors of this company, either past or present, had any interest in any dye concern?

A. No, sir.

Q. 224. Or pharmaceutical concern?

A. No, sir.

Q. 225. Did any director, either past or present, have any stock in The Chemical Foundation?

A. No, sir.

Q. 226. I ask you the same question with regard to the officers of the corporation. Has any of them, to your knowledge, been interested financially or otherwise in any dye concern or pharmaceutical concern or chemical concern, or have any stock in The Chemical Foundation?

A. No.

MR. ANDERSON: So far as the dye concerns are concerned, I would not object. But so far as stock ownership in The Chemical Foundation is concerned, the records or minutes are here and that is a conclusion which we do not admit. Therefore, I object to the witness testifying to his conclusions as to stock ownership in The Chemical Foundation. I do not regard the question of ownership in dye concerns as material and, therefore, I will not call for any formal evidence on that subject. But, as to The Chemical Foundation, I think the best evidence are the records of the company of the stock ownership and the Court may decide in the light of those records what is the relation of the officers to that company. Therefore, I move to strike out his testimony with reference to The Chemical Foundation.

MR. KRESEL: Your Honor may recall the same question came up on Friday afternoon when I asked Mr. Garvan as to his own stockholdings. Now, while we are at it, I think we are entitled to know whether it is the claim of the Government that any officer of this company or any director ever did hold stock in this company.

MR. ANDERSON: I do not think I am compelled to make plain my position on the record. What is offered is not the best evidence, and I call for the best evidence.

MR. KRESEL: Very well. If the Government declines to make its position plain, I will go on.

THE COURT: Are the records in evidence?

MR. KRESEL: The stock certificate book, I do not believe, is in evidence. I will put that in in the morning, your Honor.

MR. ANDERSON: I think possibly we could get by this difficulty. All I want is not to be precluded on this evidence by the statement of a conclusion by a witness, and I will state what I understand the record to show. If it is agreed that that is what it shows, why, I am willing to stand on that for argument.

As I recall, the record shows that when the company was organized the three formal incorporators subscribed for thirteen shares of stock.

MR. KRESEL: Fifteen.

MR. ANDERSON: Fifteen shares of the stock. One of them thirteen, and each of the other two, one.

MR. KRESEL: Exactly.

MR. ANDERSON: That when they resigned from their formal positions, they assigned to Mr. Garvan the right to the thirteen shares subscription, to Mr. Corbett the right to one share subscription, and to Mr. McKay the right to one share subscription, and that right continued on the records without any change until late in 1922, when it was formally released by these gentlemen by a record release to The Chemical Foundation. Isn't that so?

MR. KRESEL: What you mean is that the minutes show that they released.

MR. ANDERSON: They filed a formal paper releasing any right to that subscription. As I recall, those are substantially the facts, and if the witnes wants to testify to these facts, or if counsel wishes to agree to those facts, then I will waive any claim to have the stock books produced and the formal proof on that subject.

MR. KRESEL: There is no necessity either for the witness to admit that or for counsel to concede that. That is the record that you have put in here, and, of course, it speaks for itself.

MR. ANDERSON: That is all. My only objection was to the witness testifying to the conclusion that he was never a stockholder.

MR. KRESEL: Now that Colonel Anderson has reviewed to your Honor the state of the record, I will repeat my question as to whether the Government claims upon that record that either Mr. Garvan or Mr. Corbett or Mr. McKay were stockholders of the company.

MR. ANDERSON: My answer is the Government reserves the right to make any claim upon that record they can do in law.

THE COURT: One of the difficulties that I am having, Colonel Anderson, and I am not stating this in the way of criticism at all, is in finding your major premise for any of your propositions. I am finding it difficult to draw any conclusions from a minor premise alone. It seems to me that you are leaving me, during the taking of the testimony, wholly without a major premise for any syllogism, and reserving the right to lay down any major premise that you please at the time of the final argument. Am I right about that, Colonel Anderson?

MR. ANDERSON: I do not think so, sir. I think

I have been somewhat laboriously, and certainly very extensively, frank in stating to your Honor my positions on the law, my understanding of the facts, and my conclusions as to what they show.

THE COURT: Then let us take this immediate one. Do you care to state what your major premise is on that conclusion? You agree as to facts as disclosed by the record. If it is conceded that they are useless or that they do not establish that the witness was a stockholder, then we can, I assume, go on without paying any more attention to that. If, on the other hand, you are going to state that that brings it within the principle that they are stockholders, then we have another minor issue in the case.

MR. ANDERSON: The only question there is whether any other evidence can be introduced. If they can, why, counsel is quite at liberty to introduce it. We have concluded our evidence on the subject.

THE COURT: I know; but you are leaving me without a major premise. So we will have to go on on that basis.

MR. ANDERSON: I will state this: that the Government will contend in that situation that the position taken by counsel here that they had no stock interest in this company of any kind is not sound; that the right to subscribe for stock and receive stock is a valuable right, and that it was an interest. I have put in the evidence its obvious application, and if my position is sound or unsound, it is for counsel to meet the evidence. If they can prove any different facts from those on the record, they are at perfect liberty to do so.

THE COURT: That is true, Colonel Anderson. No doubt about that. But if the Government can state what use it proposes to make or use it can

make, if any, out of a particular bit of evidence, it seems to me it probably narrows and shortens the issues.

MR. ANDERSON: I am only too glad to answer your Honor's question in that regard. I have already stated the evidence could have but one relationship, and that is, to show who were stockholders of the company, or who had a right to beholders of the company. Now, who were stockcome stockholders of the company, is a question affecting the relations of these gentlemen to the transaction. What that is and whether it has any legal effect is for your Honor to decide on final argument.

MR. KRESEL: It is all right, your Honor; I will produce tomorrow the stock certificate book, and I will ask your Honor to let me put it in for the purpose of showing who the stockholders were.

MR. ANDERSON: If the counsel will produce the stock certificate book and it does not appear these gentlemen were ever registered owners of stock, I am perfectly willing to admit whatever the facts are, without putting the books in evidence.

MR. KRESEL: Do you mean to say, Colonel Anderson, that you do not now know what our stock certificate book shows?

MR. ANDERSON: I personally do not.

MR. KRESEL: With your accountants having been over our books for a period of six weeks?

MR. ANDERSON: Mr. Kresel——

MR. KRESEL: You have been misinformed, Colonel.

MR. ANDERSON: I did not say that these gentlemen were registered stockholders, your Honor. I said if he would let me see the books or it appeared they were not registered stockholders, I would not require him to burden the record with the formal evidence, but would admit whatever the facts

were. Now, I have not had a chance to examine those books personally. I do not know what the facts are, and the facts in this case are too voluminous for me to undertake to be familiar with them all.

MR. KRESEL: All right, Colonel, I will produce the book in the morning. May I proceed your Honor?

THE COURT: Yes.

Q. 227. Mr. Garvan, it is in evidence here that you executed the first or so-called big assignment of these patents to The Chemical Foundation, which is dated April 10, 1919. That instrument is Exhibit H-1 annexed to the bill. From that instrument I read the following language from page 415 of the bill:

> "All of the rights, interests, and benefits under the agreements enumerated in Schedule C hereto annexed:
>
> "All as more specifically described and set forth in the requirements or demands relating to said letters patent of the United States, applications for letters patent of the United States, trademarks and registrations thereof, copyrights and rights, interests and benefits under agreements issued by said A. Mitchell Palmer, as Alien Property Custodian, or by me as Alien Property Custodian without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws of the said The Chemical Foundation (Inc.), or otherwise, and subject only to the provisions of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or of friendly nations", etc.

I direct your particular attention to the clause which says this conveyance is made without any reservation or qualification whatsoever, "Whether by reason of anything contained in the charter or by-laws

of the said The Chemical Foundation (Inc.), or otherwise". Before I put the question to you I direct your attention to the fact that in an assignment which is Exhibit H-6 annexed to the bill of complaint likewise signed by you, dated June 21, 1919, there is similar language. I read from page 435 of the bill, your Honor, the language as follows: "without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws of the said The Chemical Foundation (Inc.), or otherwise."

Also in Exhibit H-19, which is another assignment executed by you on the 19th of February, 1921, I find this language: "and to the full extent to which I am or may become entitled to the same, including all claims and demands for profits and damages recoverable", etc.

Will you please state the reason for the language that I have read, namely, that these conveyances are made without any reservation whatsoever, whether by reason of anything contained in the charter or by-laws of The Chemical Foundation or otherwise?

MR. ANDERSON: If your Honor please, we of course object to that question, first as an effort to construe a written agreement, second, as an effort to vary a written agreement and to show by parol what the meaning is and the reason for the execution of the written agreement, all of which is merged in the agreement.

MR. KRESEL: I disclaim any desire either to vary the instrument or to construe the instrument. I am simply inquiring for the reason——

THE COURT: I had assumed before you finished your question you were going to ask for the particular circumstances under which those agreements were executed. Unless your question calls for those circumstances, although your use of the word "reason"——

MR. KRESEL: Will your Honor permit me to withdraw the question. I will recast it and perhaps avoid the objection.

Q. 228. Mr. Garvan, I have directed your attention to these three assignments. I now ask you to state, if you will, the circumstances under which these assignments were executed, with particular reference to the language I have read?

MR. ANDERSON: I make the same objection to the circumstances and the negotiations leading up to these agreements. There is not the slightest doubt about what it says or what it means. It is nothing more than coming in the back door to construe the agreement. Therefore, I object to the question and any answer thereto, or any other question relating to these agreements or to the facts and circumstances preceding these agreements, with reference to the matters covered thereby, upon the ground that the agreements speak for themselves and it is not competent for the witness to testify or to undertake to testify or construe or explain the same.

MR. KRESEL: Will your Honor hear me a minute. In view of the charge of conspiracy here, in view of the charge that these officials were duped into making these assignments, in view of the emphasis that has been laid by counsel for the Government upon this particular language both in his opening statement and when he put them in as exhibits, we claim the right that this official has to explain why that language was used and the circumstances that gave rise to its use. I repeat what I said this morning, your Honor. If this man's motives are imputed, if it is charged that he had ulterior designs in this matter, as it is charged, and we can not wink at it, he has a right to explain.

THE COURT: The same question arose with respect to reasons given by Mr. Palmer and I——

MR. ANDERSON: If your Honor please, here is an agreement executed by this witness, a deed. I confess that my knowledge of the law and practise is limited, but this is the first suggestion I have ever heard in court that a man can make a deed and then come in and say why he used certain language in the deed. I never heard such a thing suggested before; and while the charge of conspiracy opens up the evidence to some extent, it does not abolish all the rules of evidence as to what a witness can testify about a written instrument. I do not want to argue it; it seems useless for me to argue it, and I make my objection, and therefore your Honor will rule as you deem best.

THE COURT: What is the question that you have put?

(Q. 228. repeated as recorded above.)

THE COURT: The answer may be taken.

MR. ANDERSON: I note an exception if your Honor please.

A. The assignments were drawn by our patent counsel, Mr. Hoguet. Mr. Hoguet informed me that it was necessary from the patent lawyer's standpoint that there be absolutely no reservations upon the transfer of patents if we were to be able to meet the German after the war or to meet any infringer; and he said that this in no way relieved the obligations, our obligations under the charter, but that the conveyance to the Foundation should be unrestricted and unlimited if we expected to be able to bring infringement suits, and so forth, and that nothing should remain in the German or in the A. P. C. I knowing nothing of patent law——

Q. 229. What is that last statement?

A. I knowing nothing of patent law or what constituted a valid transfer of a patent, agreed to it.

MR. ANDERSON: Now that the answer has been made I move to strike it out for the reasons already stated, and for the further reason that Mr. Hoguet's expression of the meaning of a written instrument is certainly not evidence here.

THE COURT: I deny the motion, although I do not now see any pertinency the statement embodied in the last answer has with respect to the issues in this case. It will remain in under the general rule.

MR. ANDERSON: I note an exception.

Q. 230. Mr. Garvan, since the conveyance of these patents to The Chemical Foundation, made by the Alien Property Custodian, has the Chemical Foundation issued any licenses?

A. It has.

Q. 231. Have you prepared a list of all such licenses issued?

A. I have. Under my direction. I have not prepared it. It was prepared under my authority.

Q. 232. I show you this document (handing witness paper). Is that the list of all the licenses that have been issued by The Chemical Foundation from its inception to December 31, 1922?

A. It is.

MR. KRESEL: I offer this in evidence. I think the Government has already seen this.

MR. ANDERSON: One moment. If your Honor please, I do not object to the introduction of this statement, as I understand it is made up from the original licenses, reserving the right, as was agreed by counsel, to check the same and call attention to any errors therein.

MR. KRESEL: Certainly.

MR. ANDERSON: In the absence of such knowl-

edge, I will assume that this statement is correct and I will not require the production of the original licenses in court.

MR. KRESEL: The licenses have just arrived now and you may have access to them, Colonel, at your leisure.

Same received in evidence and marked "Defendant's Exhibit No. 83." (*See Exhibits, Vol. IV, page 2583.*)

MR. KRESEL: This exhibit, your Honor, I shall take only a moment to explain to you. The information contained thereon is the following: The number of the license is given, the name of the person to whom the license was issued, the product that is covers, the royalty rate, the date when the license was issued, the number of the patent which it covers, the expiration date of the patent, the amount of royalty received, the amount of license fee received and the total amount received. That runs down to December 31, 1922, showing that during that period 379 licenses had been issued and that the total amount collected by The Chemical Foundation on those licenses was $305,106.77.

MR. ANDERSON: May I ask a question? It was suggested this morning that they insert after the name of the licensee the form on which the license was issued. As I understand, there are three forms.

MR. KRESEL: Two I know of.

MR. ANDERSON: Two for patents and one for trademarks.

MR. KRESEL: Oh, two for patents.

MR. ANDERSON: The two for patents have been put in evidence and can be identified by the exhibit number, and the trademark form can be put in, and then if they would put on the exhibit, I

would like it to be understood that they would be on the exhibit at the appropriate place the form on which that license is issued, in order that we may identify the license.

MR. KRESEL: I will be very glad to do that.

MR. ANDERSON: With that understanding I will not object to this in its present form.

MR. KRESEL: Then I will now offer, pursuant to that understanding, a form of trademark license.

Received in evidence and marked "Defendant's Exhibit No. 84." (*See Exhibits, Vol. IV, page 2619.*)

Q. 233. Without putting in evidence, Mr. Garvan, all of the licenses that have been issued, I am going to ask you, with Colonel Anderson's permission, whether it is a fact that The Chemical Foundation has never issued an exclusive license?

A. It is.

Q. 234. All licenses have been non-exclusive licenses?

A. Certainly.

Q. 235. Has The Chemical Foundation ever declined to issue a license to anybody?

A. Twice.

Q. 236. When?

A. Twice.

Q. 237. Will you state the circumstances of each case?

A. One was a young man who wanted a license on salvarsan.

Q. 238. Do you remember his name?

A. I do not. We will get it. We told him that we did not think he was equipped, salvarsan being a dangerous drug, but if he would go to the United States Health Department and satisfy himself that he had the training and ability to make it and get a certificate from them we would issue a license. He studied a

year and a half or some time like that, got the certificate, and came back and got the license.

Q. 239. That is one case.

A. That is one case.

Q. 240. What is the other one?

A. The other is a case where some people issued stock on something and stated in their prospectus before they ever came near us that they had licenses from The Chemical Foundation. Investigation showed that it was a fly-by-night stock-jobbing game, that they had no factory, and no intention of manufacturing. It was a stock-selling scheme and we declined to issue the license.

Q. 241. With those two exceptions have you issued licenses to all American citizens that wanted them?

A. We have.

Q. 242. Have you made any distinction in the royalties that you charged upon the same kind of license as between different licensees?

A. We have not.

MR. ANDERSON: One moment. I think that is going a little bit far. The statement speaks for itself as to licenses and royalties charged, and I do not think the witness ought to interpret his licenses. You may let the evidence go in to that extent.

MR. KRESEL: There can be no harm, Colonel. I am not going to pursue the subject. Of course, we could dig that out of a long exhibit I put in, but I am sure there is no harm in his making the statement.

THE COURT: Is the objection withdrawn?

MR. ANDERSON: I think that statement ought to be stricken out. I think that is a question of argument from the statement itself.

THE COURT: Does your statement show the terms under which the licenses were issued?

MR. KRESEL: Yes, your Honor.

THE COURT: You may show what from your point of view that statement does show with respect to this matter and I shall sustain the objection because it is documentary and the objection is made on that. Any time you desire, I will be very glad to hear your statement.

MR. KRESEL: I will not stop to do that now.

Q. 243. Has The Chemical Foundation given to the United States Government a license covering all of the patents that were ever conveyed to it?

MR. ANDERSON: Of course, I object to that question. The license can be produced.

THE COURT: The license has been offered, has it not?

MR. KRESEL: No, your Honor. I am just about to put it in. I will re-cast the question.

Q. 244. Has The Chemical Foundation given to the United States Government a license?

A. It has.

Q. 245. I show you this instrument and ask you to state whether that is the first license that was given by The Chemical Foundation to the United States Government?

A. It was.

Q. 246. Please give me the date?

A. February 26, 1921.

MR. KRESEL: If your Honor please, the original is in the possession of the Government, but by stipulation between Mr. Galloway and ourselves we are permitted to use a copy.

MR. GALLOWAY: Subject to correction.

MR. KRESEL: Subject to correction, certainly. I should have much preferred to have the original in court, but I understand they cannot locate it. May this be marked?

MR. ANDERSON: Before that is offered, if your

Honor please, I wish to note an objection to the introduction of that document, not on the ground that it is a copy—that we are agreed upon—but because there is no evidence here that any officer of the Government of the United States authorized to accept such a paper has accepted it; and, therefore, it is not a license or contract between The Chemical Foundation, whatever it may be, and the Government of the United States unless it is accepted by some officer or entered into by some officer who is authorized to discharge the function of accepting that license.

MR. KRESEL: Will your Honor permit me for the moment to withdraw that because I have made an error. That was not the first one and I want to put them in in their chronological order.

THE WITNESS: Then I want to withdraw my answer.

MR. KRESEL: Yes. May the answer to the last question be stricken out.

Q. 247. Mr. Garvan, I show this instrument and ask you whether that is a copy of a release given by the Alien Property Custodian to the United States Government on the tenth day of April, 1919?

MR. ANDERSON: I shall object to that question and any answer thereto on the ground that while the witness can identify a certain instrument as executed by the Alien Property Custodian and prove delivery to the United States Government, he cannot prove that it is a release and it is not delivered to the United States Government until proof is made that it was accepted by an officer of the Government authorized to accept it in accordance with its terms. I have not read the paper. I do not know what it is. But that must be proved.

MR. KRESEL: One step at a time, please.

MR. ANDERSON: Very good, sir. I object to

that question and answer because the question embodies several statements, that it was a release given to the United States Government, which implies the character of the paper and the act of delivery, all of which must be proved.

THE COURT: I think the objection is well taken, so far as the question embodies the term "release." I will dispose of that first and if you have anything to say I will hear you on the other.

MR. KRESEL: No, your Honor. I understand that the objection is sustained?

THE COURT: The objection to that question is sustained.

Q. 248. Look at this instrument that I now show you and state whether it is a copy of an instrument that you signed as Alien Property Custodian on the 10th of April, 1919?

A. It is. I have looked at it.

Q. 249. I show you a copy of a letter dated April 15, 1919, and ask you whether you wrote that letter to Honorable A. Mitchell Palmer, Attorney General?

A. I did. That is my signature.

Q. 250. Is the instrument that I first showed you as having been signed by you on the 10th of April, 1919, a copy of the instrument that was enclosed with that letter?

A. Yes.

MR. KRESEL: I now offer in evidence the letter and the copy of the instrument; and as to those, I state that counsel for the Government say that they cannot locate the original. I understand you had it and then lost it again, or something like that.

MR. GALLOWAY: I have seen it. I do not know where it is now. I have seen it, but I do not say I have lost it.

MR. KRESEL: May the letter be marked as Exhibit No. 85 and the instrument No. 85-A?

MR. ANDERSON: I object to the introduction of that letter and instrument, not on the formal grounds of copies, but on the ground that it does not appear that the Honorable A. Mitchell Palmer, Attorney General of the United States, was authorized to accept any license from the Alien Property Custodian to the United States or to accept the document introduced in evidence, and there is nothing in his position as Attorney General, so far as I know, that authorizes any such act.

MR. KRESEL: I do not understand that it is incumbent on us to prove the authority of the official to accept. But if it were, we say that the Attorney General of the United States has authority on behalf of the United States Government to accept documents for it. He has as much authority under the Executive Acts as the Secretary of War or the Secretary of Navy may have and under these circumstances we say that this evidence is admissible. It is the delivery of an instrument pursuant to what we claim to be a contract made here. It is an instrument that is referred to in the exhibit which the Government has put in, namely, the original assignment of April 10, 1919, and your Honor will recall, as I read from page 416 of the bill, the conveyance is subject only to the provisions of a certain release to the United States of America bearing even date therewith. That is the release that I am now offering.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibits Nos. 85 and 85-A." (*See Exhibits, Vol. IV, pages 2623 and 2624.*)

MR. KRESEL: I desire to read two paragraphs

of this, with your Honor's permission. (Reading.)

Now, the Schedules A, B and C which are referred to in that instrument are not annexed, and we are privileged to annex them hereafter.

MR. ANDERSON: There is no objection to that, of course. Now, I wish to add to my former objection, and in order to make it in proper form, to move to strike out this document and letter for the reasons already stated in my objection to the introduction thereof; for the further reason that it appears, according to the testimony of Mr. Palmer, that he negotiated the sale of this property and its release on the other side. He could not act on both sides and, therefore, could not affect the rights of the United States, acting by the Attorney General; and, in the third place, for the reason that there is no provision of the Alien Property Act or the laws of the United States which confers upon the Alien Property Custodian the power to execute any such release, whether to the United States or anybody else, or to convey or undertake to convey, or to release, or undertake to release, any such rights as therein provided.

MR. KRESEL: Does your Honor desire to hear me on that proposition?

MR. ANDERSON: I should have added, without adequate consideration, which is embraced in my general statement as to the character of the paper.

THE COURT: I am somewhat hazy with respect to this particular transaction. I was under the impression that the release had been signed by The Chemical Foundation.

MR. KRESEL: No, your Honor. I withdrew that.

THE COURT: That is the license that you withdrew.

MR. KRESEL: Yes.

THE COURT: But this pertains to the accumulated royalties or license fees, as I understand it, does it not?

MR. KRESEL: The one that has just come in?

THE COURT: Yes.

MR. KRESEL: No, sir, that is a release.

THE COURT: Of what?

MR. KRESEL: From the Alien Property Custodian to the United States of all damages that might have run against the Government for using these copyrights and trademarks prior thereto.

THE COURT: It has nothing to do with the accumulated license fees?

MR. KRESEL: No, your Honor, not at all. That is only one of the instruments. I have several that I am going to put in.

THE COURT: I wanted to place this one, and I do not for the moment.

MR. KRESEL: Your Honor will see this is the same date that the first assignment to The Chemical Foundation was made, and the assignment is made expressly subject to this release.

THE COURT: We have to have that paper to see what The Chemical Foundation got. If valid, The Chemical Foundation acquired the rights in the patents and trademarks without right to relief against the United States for anything that it has done. That is your contention?

MR. KRESEL: Yes, sir.

THE COURT: The contention of the Government, I assume, is that that release is invalid for one or more reasons, and consequently, The Chemical Foundation is now in a position, if this transaction is not set aside, to maintain an action

against the United States, although there is no authority for its suing the United States, as I understand it.

MR. ANDERSON: I do not say that The Chemical Foundation would be in a position to do it, because The Chemical Foundation may have estopped itself to bring an action against the United States; but the release in itself is an act entirely outside of the authority of an officer of the Government who undertook to execute it, and does not constitute evidence of any kind.

THE COURT: Did you put in evidence the assignment which was made subject to that?

MR. ANDERSON: Yes, sir, that is all in evidence.

THE COURT: Would not that offer in itself make that release admissible for whatever it is worth?

MR. ANDERSON: I do not know, if your Honor please; but I feel I ought to object to that as nothing but a blank piece of paper.

THE COURT: Yes, I understand it.

MR. ANDERSON: Of course, I do not ask your Honor to decide it now. I am just making the objection and your Honor may let it go in under the objection, as far as I am concerned.

THE COURT: But the reason for not deciding it is possibly that you are going to introduce the next one. However, we will leave that open.

MR. ANDERSON: I merely want to preserve the record.

THE COURT: I was trying to find out where we were. I understand you now.

Q. 251. Now, Mr. Garvan, I return to this instrument of February 26, 1921. Please examine it again and state whether The Chemical Foundation gave that instrument to the United States Government?

MR. ANDERSON: I wish you would frame your question, whether The Chemical Foundation executed that instrument.

Q. 251. (Continued.) Whether The Chemical Foundation executed that instrument.

MR. KRESEL: I will accept the suggestion.

A. This is not the original.

Q. 252. This is a copy?

A. I am sure of it. I am sure of the girl that signed the certificate.

MR. KRESEL: I ask that this be marked for identification.

(Marked "Defendant's Exhibit K" for identification.)

Q. 253. I show you a photostat copy of an original instrument signed by The Chemical Foundation, Incorporated, by Francis P. Garvan as president, and ask you to state whether that was signed by you as president of The Chemical Foundation?

A. It was. It is my signature.

MR. KRESEL: I offer this instrument in evidence and I direct counsel's attention to the fact that on the face of it it bears an acceptance on behalf of the Government, by Theodore Roosevelt, Jr., acting Secretary of the Navy.

MR. ANDERSON: I assume that is the signature of Mr. Roosevelt. I do not know it myself. But even then, I object to the admission of this instrument on the ground that it does not appear that Colonel Roosevelt had any authority whatever from the Government of the United States to accept this instrument, whatever it is, or to deal with the subject matter involved. I recognize that that is a question that would require a great deal of argument, and I merely make the objection to preserve the record.

MR. KRESEL: I do not believe, your Honor,

that it would require a great deal of argument at all. Our position is that it is not incumbent upon us to prove the authority. Moreover, if it were the signature of this gentleman who holds this office, it is *prima facie* proof of his authority. He is an officer of the Government and if he had not the authority, they can prove that he had not.

I offer this instrument in evidence.

MR. ANDERSON: If your Honor please, of course, that is in addition to all my general objections that it is immaterial and irrelevant.

THE COURT: I understand. But I do not know what this is.

MR. KRESEL: Of course. I could not state it in my question. Your Honor will realize that. The question would have been objected to. This, your Honor, is a license and release from The Chemical Foundation to the United States Government covering all of the patents that were ever conveyed to The Chemical Foundation.

THE COURT: A release of what?

MR. KRESEL: A release of all claims for infringement by the Government.

THE COURT: It is another release?

MR. KRESEL: It is another release.

THE COURT: In the same language?

MR. KRESEL: If your Honor will let me read the one that is now going in evidence, you will see that the one that I have had marked for identification was set aside by the larger one that is now going in evidence. That is the reason I have not pressed putting it in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 86." (*See Exhibits, Vol. IV, page 2629.*)

MR. KRESEL: If your Honor will indulge me

for a few minutes while I read a few paragraphs of this instrument. (Reading.)

There are attached to the instrument various schedules. They are quite numerous and of course I shall not read them.

Gentlemen, may I have a stipulation that this instrument has been or is now being recorded by the Government of the United States in the Patent Office?

MR. ANDERSON: If you state the date, and it is a fact. Do you know, Mr. Galloway?

MR. GALLOWAY: My information is that it has been filed.

MR. KRESEL: Your information is that it has been recorded.

MR. GALLOWAY: That is the information which we received.

MR. ANDERSON: In the second place, I do not know who put it there and by what authority it was put there. We are making inquiry and we will try to find out the facts. We have got a man down there now trying to get the facts, but I do not know anything about them and have not enough facts to agree upon it.

Q. 254. Mr. Garvan, while you were Alien Property Custodian did you execute an instrument of which I show you a copy, which has been produced from the office of the Alien Property Custodian by the Government?

A. Is this the fifty-seven hundred patent license?

Q. 255. That is my understanding.

A. Yes, I executed this.

MR. KRESEL: I offer in evidence, if your Honor please, instrument executed by the Alien Property Custodian on December 20, 1920, together with the schedules thereto attached. With your

Honor's permission, we will substitute a copy instead of the original.

THE COURT: This is which one?

MR. KRESEL: If I may state, this is a license and release from the Alien Property Custodian to the Government of the United States as represented by the Secretary of the Navy covering 5,700 German patents; the license and release being made by the Alien Property Custodian to the Navy Department for a consideration, as I shall show, of $100,000. This was made on the 20th of December, 1920, by Mr. Garvan as Alien Property Custodian. The original instrument, I understand, is in the possession of the Government. What is here being produced is the copy which is on file in the office of the Alien Property Custodian. Is that right?

MR. ANDERSON: I think so.

THE COURT: Is there objection?

MR. ANDERSON: If your Honor please, from a hurried examination of this document which while produced by the Government I confess not to have before seen, I merely want in addition to my general objection on the ground of immateriality and irrelevancy and so on, to note the additional objection that it does not appear that the Alien Property Custodian had any authority to execute any such document or that the Secretary of the Navy had any authority to accept any such document or to make any such contract with respect to the same.

THE COURT: It is not an assignment, but a license?

MR. KRESEL: A license and release, your Honor.

THE COURT: Where is the title to those patents now?

MR. KRESEL: I assume that the title remains in the Alien Property Custodian.

THE COURT: Can the Alien Property Custodian, as agent of the United State, license these patents to the United States?

MR. KRESEL: There is no question about that, your Honor. Under the Act he has the right to deal with the property as if he were the absolute owner. He, therefore, has a right to license.

THE COURT: I can understand how he can do that without passing upon the construction of the act. I can understand how that might possibly happen with any person except the United States. It is admitted.

MR. KRESEL: I shall be very glad to give your Honor my views, but I think nothing is going to be gained by it at this time.

Received in evidence and marked "Defendant's Exhibit No. 87." (*See Exhibits, Vol. IV, page 2635.*)

Q. 256. Before you executed this instrument which I have just put in evidence, some of which I shall read in a little while, did you receive a letter from Mr. Franklin D. Roosevelt, Acting Secretary of the Navy, of which I show you a copy?

A. I did.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: Objected to on the same grounds as the preceding documents.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 88." (*See Exhibits, Vol. IV, page 2652.*)

MR. KRESEL: I shall first read the letter. It is dated at the Navy Department in Washington, March 16, 1920. (Reading.) Now I read from Defendant's Exhibit No. 87. It is dated Decem-

ber 20, 1920. After reciting the appointment of Mr. Palmer as Alien Property Custodian and Mr. Garvan as his successor, and reciting the seizure of a large number of patents, the instrument proceeds as follows (reading).

MR. KRESEL: That is all I desire to read of that.

THE COURT: That is the release executed by the Alien Property Custodian to the United States?

MR. KRESEL: To the United States. You see, your Honor, you now have before you two instruments, one covering a release and license to the Government, covering all of the patents conveyed to The Chemical Foundation.

THE COURT: And accepted by the Secretary of the Navy.

MR. KRESEL: By the acting Secretary of the Navy. Then you have this license and release.

THE COURT: For 5,700 patents?

MR. KRESEL: For 5,700 additional patents, German patents held by the Alien Property Custodian.

THE COURT: For $100,000?

MR. KRESEL: For $100,000,

THE COURT: What is the nature of those patents, Mr. Kresel?

MR. KRESEL: Oh, your Honor, I am going to put in several classifications of those. Briefly speaking, let me tell your Honor. They were the most important patents, covering patents on munitions, gun carriages——

THE COURT: You call them munition patents, then, just for convenience.

MR. KRESEL: Mostly munition patents; but then there were also surgical patents, chemical patents. They were of all sorts. There is a

printed list of those contained in the report of the Alien Property Custodian made to Congress in 1922, and when I come to the examination of a witness, I am going to bring out some of that and your Honor will learn about it.

Q. 257. Mr. Garvan, I show you this folder, and ask you to examine it. It is produced by the Government from the files of the Alien Property Custodian.

MR. KRESEL: Is that right, Mr. Galloway?

MR. GALLOWAY: Yes, that is right. That is only an abstract, however.

Q. 257. (Continued.) I wish you would examine that.

MR. KRESEL: May I lead him in this question? I think it will save time.

MR. ANDERSON: I would like to know what it is about before I agree to that. If it is immaterial I do not care anything about it.

MR. KRESEL: Listen to my question then and you will get it.

Q. 258. I ask you to state whether that is an instrument showing that the Alien Property Custodian on the sixth day of February, 1919, assigned to the United States Government, as represented by the Secretary of the Navy, a number of patents, a list of which is attached hereto, for a consideration of $1,190.

MR. KRESEL: I will show it to Colonel Anderson. Perhaps we could agree, Mr. Galloway, without putting a question to the witness. If you will permit me I will dictate the stipulation and you may see if it is correct. May I do that, your Honor?

THE COURT: Yes.

MR. KRESEL: It is stipulated and agreed that on the sixth day of February, 1919, A. Mitchell Palmer, as Alien Property Custodian, conveyed to the United States of America——

MR. ANDERSON: You are wrong, just stop right there. I am not going to agree that anything was executed and assigned. You can say that he executed a certain instrument.

MR. KRESEL: Executed an assignment.

MR. ANDERSON: No. If there is going to be any legal effect I will not agree upon it. I do not mind agreeing to the fact, but not to the legal effect. If your Honor please, I do not want to appear unaccommodating.

MR. KRESEL: No, I am not charging you with that.

MR. ANDERSON: Our view is that these papers are not only immaterial because two wrongs cannot make a right, but, in the second place, they have not anything to do with this case. If they are going to be proved, it is important that the facts should be shown, just what the instrument was.

MR. KRESEL: The question is what the instrument was. We asked you to produce it and you have not. You have it and we have not.

MR. ANDERSON: I think I ought to state to your Honor that your Honor may not misunderstand, we have sent men to Washington nearly every day to get papers counsel has asked for. Whenever he asked for them we sent immediately to Washington. I just had a telephone message from the State Department saying they would not let their records go out of their Department except in charge of one of their officers. I can subpoena them and let that officer come up here with the papers wanted by Mr. Kresel and he will be here tomorrow. I cannot produce all of the records of that office when Mr. Kresel calls for them.

MR. KRESEL: What I have here, your Honor, is an abstract.

THE COURT: Do you want to put that into the evidence?

MR. KRESEL: I want to get from the witness the facts instead of putting this in evidence. I thought we could agree on it, but apparently we cannot.

Q. 259. I wish you would take this, Mr. Garvan, and state whether or no on or about the sixth day of February, 1919, an assignment of the patents mentioned in Schedule A, which is here, was made by the Alien Property Custodian to the United States of America, represented by the Secretary of the Navy.

MR. ANDERSON: If your Honor please, I have to object because I cannot conceive that the question as asked, whether an assignment was made, is other than a legal conclusion to be drawn only from the written instrument, and I will do my best to help get the written instrument. It is not in the Alien Property Custodian's records, and we will try to get it if we can, but if this matter is important at all, which I do not think it is, it is quite important, and, therefore, it is important that it should be proved in the proper way. Therefore, I have to object to this.

MR. KRESEL: If your Honor please, we have asked the other side to produce these instruments for us. They have had considerable time and yesterday they produced what I have now in court. Now, pardon me a minute, Colonel, I do not mean to pick any quarrel with you at all. I withdraw that for the present and I am going to request the Government again to be good enough to make a search and try to produce these documents for me before the case closes. If they do not produce them, I shall ask your Honor to permit me to re-offer this.

THE COURT: This case will go on until all

the documents as well as all the evidence desired by either side is put upon the record.

MR. ANDERSON: Will your Honor permit me to explain. This document, I assume, is recorded in the Patent Office, and these gentlemen have just as much access to it as we have.

THE COURT: That statement is not in criticism of you, Colonel Anderson. It means if we have to wait for documents, we will have to wait for them. I realize there are numerous documents and it takes time to get them. All I have been attempting to indicate is that we will go on until the documents that you desire from the defendant are produced for you and that the documents that the defendant desires from the plaintiff are produced by you. There is no criticism expressed or implied.

MR. KRESEL: Not at all; I am not criticizing.

MR. ANDERSON: I would like to have it understood, however, that all of these documents are just as available to counsel as they are to us. They are not in the office of the Alien Property Custodian; a careful search has been made.

THE COURT: You are the Government of the United States, you are not Alien Property Custodian.

MR. ANDERSON: But the Patent Office is an office of public record, and they are available to the defendant as well as they are to us. We do not have to make copies of public records for him.

MR. KRESEL: If that is the position of Colonel Anderson, I am glad to understand it. If it is that he will not go to the trouble of having a copy obtained from the Patent Office, very well, I shall take that matter up and get it. Colonel Anderson, you are relieved from that.

MR. ANDERSON: That is the main point. If I can find it in the records of the Government I will produce it here, and that search is now going on. But if we do not find it in the records of the Government, I do not think it is up to the Government to go to the Patent Office and have a copy made.

THE COURT: That is a matter that I have not been asked to get into so far.

Q. 260. Mr. Garvan, have you had prepared and and do you now produce the statement giving the names of firms and corporations who have taken licenses from The Chemical Foundation since its inception, showing the business that those licensees are in?

A. I have.

MR. KRESEL: I offer this in evidence.

MR. ANDERSON: I do not know what it relates to, sir, so I will just let it go in under the general objection. I do not know what it means.

Received in evidence and marked "Defendant's Exhibit No. 89." (*See Exhibits, Vol. IV, page 2653.*)

MR. KRESEL: This instrument, your Honor, shows that 103 firms and corporations have taken out licenses from The Chemical Foundation. Your Honor will recall that I gave you the number of licenses taken out, something over 300, but those were taken out by 103 firms and corporations, and the business of each of those is given in this exhibit. They run from pharmaceuticals to therapeutic apparatus, aluminum alloys, vegetable oils, flux, tanning materials, etc.

MR. ANDERSON: Mr. Kresel, may I ask if that is the list of licenses that you put out, and whether all the licenses are now outstanding?

MR. KRESEL: Do you mean the first exhibit, the big one?

MR. ANDERSON: Does it include the Federal Trade Commission licenses?

MR. KRESEL: Oh, no.

MR. ANDERSON: Or contracts?

MR. KRESEL: Oh, No.

MR. ANDERSON: It is just licenses actually issued by The Chemical Foundation?

MR. KRESEL: Yes. Is there anything else?

MR. ANDERSON: No. I merely wanted to get that straight for my own information.

Q. 261. Mr. Garvan, have you had prepared a list showing the number of licenses each year and the number of patents involved?

A. Yes. (Handing counsel.)

MR. KRESEL: I offer that in evidence.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 90." (*See Exhibits, Vol. IV, page 2658.*)

Q. 262. Mr. Garvan, how many patents altogether were assigned by the Alien Property Custodian to The Chemical Foundation?

A. 4,919.

MR. ANDERSON: May I ask if that is just patents, or trade marks?

MR. KRESEL: That is patents and applications which matured into patents.

MR. ANDERSON: But not trademarks?

MR. KRESEL: No, that does not include trademarks.

Q. 263. At the time of the assignment of these patents to the Foundation, was it subsequently found that any had in fact expired before the assignment?

A. Yes, just 54.

Q. 264. And did it also transpire that there had been duplications in the assignments?

A. Yes, sir, 20.

Q. 265. Up to December 31, 1922, had any of the patents so assigned to The Chemical Foundation expired?

A. Yes, sir.

Q. 266. How many?

A. 858.

MR. ANDERSON: Have you not got a list of those expired patents that you put in?

MR. KRESEL: No.

Q. 267. In addition to the 858 that had expired, had The Chemical Foundation reassigned any of the patents that it had received, either to the Alien Property Custodian or to others?

A. Yes, sir, 45.

Q. 268. So at the end of 1922 how many patents remained in the possession of The Chemical Foundation out of the total of 4,919 that had been assigned to it originally?

A. 4,016.

Q. 269. I am going to ask you to state how many patents were licensed by The Chemical Foundation from the inception of its existence to the end of 1922?

A. United States manufacturers, 440.

Q. 270. In other words, of all the 4,919 patents that had been assigned to The Chemical Foundation, licenses covering only 440 were ever issued?

A. Down to December 31, 1922.

Q. 271. Except the licenses to the United States Government that you have in mind?

A. Yes, sir.

Q. 272. Up to December 31, 1922, how many licenses were cancelled or expired of those that had already been issued?

A. 116.

Q. 273. So that on December 31, 1922, how many patents remained out under license?

A. 324; and there were four patents included in licenses out for signature.

Q. 274. Of the 4,919 patents that were assigned to The Chemical Foundation, how many ever produced any income to The Chemical Foundation?

A. 491.

Q. 275. Of the 491 patents that produced any income, how many, if any, expired by December 31, 1922?

A. 46, which produced $115,417.79.

Q. 276. And can you give the percentage of that amount of $115,417.79 to the total income that The Chemical Foundation received from all patents?

A. 17½ per cent.

Q. 277. On December 31, 1922, of the 4,016 patents that still remained unexpired, how many were producing any income?

A. 445, or about 11 per cent.

Q. 278. Then during the three years and nine months, which is the period between April, 1919, and December 31, 1922, is it the fact that 89 per cent. of the patents assigned to you earned nothing?

A. That is the fact.

THE COURT: Do you mean by that, by way of materials imported or licensed?

MR. KRESEL: In every way, your Honor, both ways.

Q. 279. Mr. Garvan, what were the total earnings of The Chemical Foundation for the period of three years and nine months from April, 1919, to December 31, 1922, upon all patents?

A. 661,706.28.

Q. 280. Have you had calculated the gross return per patent; using 4,919 patents as the number that had

been assigned to The Chemical Foundation, what does that show as the gross return per patent for the period of three years and nine months?

A. $134.52.

Q. 281. And per year?

A. $35.87.

Q. 282. Per patent?

A. Per patent.

Q. 283. Please look at this paper and state whether that is a correct statement of the income and expenses of The Chemical Foundation from its inception to December 31, 1922?

A. It is.

MR. KRESEL: I offer this in evidence.

THE COURT: Admitted

Received in evidence and marked "Defendant's Exhibit No. 91." (*See Exhibits, Vol. IV, page 2659.*)

MR. KRESEL: The statement shows that between April 10, 1919 and December 31, 1922, the total income from royalties and licenses, contracts acquired, trademarks, contributions received, interest and discount received, was a total of $699,925.83; that the total expenses for the period were $507,361.27, not including, however, any educational expense as to which we shall introduce evidence in a little while.

Deducting those expenses from the total income leave a net income before charging educational expense of $192,564.56. The educational expense during the period amounted to $340,245.76. That created a deficit as of December 31, 1922, of $147,681.20. In other words, according to our figures of the capital that had been paid in, the corporation had lost $147,681.20.

THE COURT: Does your statement show how the total of $507,000 was made up?

MR. KRESEL: Yes, your Honor. May I hand you a copy? (Handing paper.)

MR. ANDERSON: Mr. Kresel, you have reference there to Schedule 1 and Exhibit B. Are you going to introduce those?

MR. KRESEL: Yes, I am going to.

MR. ANDERSON: Because I would like to have the details.

MR. KRESEL: Certainly. You shall have it. I will put it in now.

I now offer in evidence Exhibit B referred to in this statement.

THE COURT: That is the educational expense item?

MR. KRESEL: That is the educational expense item.

THE COURT: Admitted

Received in evidence and marked "Defendant's Exhibit No. 91-A." (*See Exhibits, Vol. IV, page 2660.*)

Q. 284. Have you another copy, Mr. Garvan?

A. No, I have not another copy, apparently.

MR. KRESEL: This exhibit, your Honor, shows a statement of educational expense from April 18, 1919, to December 31, 1922. May I read a few items? Copies of "Creative Chemistry, $60,032.73. Postage and Express Charges, $12,904.01. Distributing letters in connection with "Creative Chemistry," $17,184. Copies of the "Future Independence and Progress of American Medicine in the Age of Chemistry, $28,573. Copies of an exhibit prepared under the auspices of the National Research Council, $9,802. "Aims and Purposes of The Chemical Foundation, Inc.," $11,694.

Copies of testimony of the Army and Navy, $2,300. Copies of "What the Chemist Has Done and May Do for Them in War and Peace, $2,700.

Before I put a question to the witness, I read from the third page of this Exhibit B, Colonel:

"Industrial Survey and Research Service Enlisting Aid of American Women in Chemical Research and making Chemical Survey of U. S., 9,139. Wilder D. Bancroft, work in connection with writing a book on the theory of dyeing, and a contribution to continue the publishing of the Journal of Physical Chemistry, $5,500. National Research Council, Development of Chemical Information useful to the industries of National Defense and Chemical Medicine, Standardization of Biological Stains and Chemical Exhibits," $11,000. And so I could go on.

THE COURT: Are the figures for the gross income different from those shown by the plaintiff?

MR. KRESEL: No, your Honor.

THE COURT: They are the same?

MR. KRESEL: Exactly the same. The total of this Exhibit B of educational expense is $340,245.76.

Q. 285. Mr. Garvan, I wish you would, in a very few words, state to the Court the extent of the expenditures made by the Foundation in what you call, or what appears upon your books as educational work. Would you like this to refresh your recollection (handing paper)?

A. Yes. In the first place, we became obligated for $10,000 on which we have paid, up to December 31, 1922, $7,500 for the National Research Council.

Q. 286. Tell us, please, what the National Research Council is?

A. The National Research Council is a continua-

tion of the National Warfare Council. It is a Government-controlled institution in Washington for the encouragement of research throughout the country. It is endowed by a gift from the Carnegie Foundation of some $5,000,000. It encourages research in any branch.

It is an outgrowth of the war. We promised them $10,000, and gave them $7,500 on it for the development of a survey of the chemical equipment and chemical capacity of the country, and in men, universities, schools, laboratories, and so forth, for the use of the Army and Navy, for the use in case of war, for the use of the Government in case of need, for the use of industries, for the use of the country in general, and that survey was taken of the country, and the results of it are in the National Research Council, available to the different Government departments, and anybody in the country who wants to find out anything about the personnel or equipment or capacity along any line of American chemistry.

American Chemists' Society. We became obligated for $25,000; paid them, up to December 31, 1922, $5,000 on that. During the years 1921 and 1922, during the slump in all industry, the American Chemists' Society felt they were unable to keep up their circulation of scientific literature, and it being in our development period, the Foundation contributed to them in order to prevent the lowering of the standard of the distribution. They distribute what are called abstracts of the progress of chemical science throughout the world, and that was given to them in order that the standard might be kept up.

The National Research Council were given $1,000 to help complete the work in connection with the compilation and publication of chemical and physical constants. That is a work that has been going on under

the supervision or co-operation of the Government, and chemical and physical constants are the working mathematics of chemists, and it was for the purpose of finishing that publication, to be made available to the whole country, that that was done.

The chemical survey was instituted and has not been completed, but will be resumed when we have funds, of surveying the country to find out in each district what researches needed chemical development, as to metals or agriculture or soil. It was done by states.

Q. 287. Who had charge of that?

A. Miss Obemauer. Through the departments down in Washington. It was a gathering together of all the Government information in the different departments, to be placed before the authorities of each state or group of states, with an endeavor to show them what the chemist could do for them if he was given a chance.

The National Research Council, we were obligated for $2,000, and gave $1,000 for the standardization of biological stains.

Q. 288. Will you explain that?

A. Before the war we were entirely dependent on Germany for biological stains, and that caused tremendous distress in this country. Diphtheria and pneumonia, all those diseases are now detected by means of biological stains. You take a smear of the throat and they cannot detect it, they cannot decide on the germ without having a piece of dye to put on the slide, which brings it out, so that the biologist can detect it. And they are used in botany, by all the botanists, by the bacteriologists, by the pathologists, by all our hospitals and all our research and educational institutions. We are entirely dependent on Germany for them, for the Griebler stains. That was the name in Germany.

We organized a committee on which was Dr. Kahn, who was the United States agricultural chemist in Northern New York, at the station there, and he got the different societies together, the Bacteriological Society, the Botany Societies, and so forth. They each appointed representatives and they, as a committee working with the industry, have developed these things until American stains are superior to anything that ever came out of Germany. It is a small business. It is only $60,000 worth of business. But every hospital and medical place in the country is absolutely dependent upon it. And we financed the standardization and the expenses of this committee, representing the scientists, to work with the industry to produce these stains, which is now accomplished.

Wilder D. Bancroft was the head Professor of Cornell and was, during the war, the Chief of the Chemical Warfare Service of the Government, and we contributed $3,000 to keep alive the Journal of Physical Chemistry, and became obligated for $50,000. more, $10,000 for the next five years. We formed an alliance with the London and English Chemical Societies, and in order to free English-speaking people from dependence upon German chemical literature, both nations have combined to bring out this magazine, which will offer the opportunity to English and American chemists to produce their discoveries without producing them in Germany; and the Foundation, on behalf of America, has promised to contribute $10,000 a year for five years to bring about that combination and develop that magazine to its fullest extent.

Three thousand five hundred and forty-four dollars and eighty-two cents; we co-operated with The Chemical Warfare Service through Mr. H. S. Kimberly in creating the exhibit——

Q. 289. Who is The Chemical Warfare Service?

A. It is the United States Government Chemical Warfare Service.

Q. 290. A branch of the Army?

A. A branch of the Army. We did this also through the National Research Council. This was for the getting up of an exhibit of the relation between the development of the chemical industries and our national defense. It was a physical exhibit which was exhibited before both branches of Congress and is now in the Smithsonian Institute in Washington.

Also for the expenses of taking moving pictures of the tests upon the different battleships of the new arm of aeroplane and chemical warfare. The United States Government allowed two vessels to be bombarded through the Air Service and the Chemical Warfare Service, and they had no money and we contributed the money to make the films of those two demonstrations to show that the day of the battleship was over and that the air and chemistry were the menaces of the next war.

Then there is $5,364.31 which is also part of that same expense, and they should have been combined, in this exhibit, and worked through the Chemical Warfare Service and Chemical Research Council.

Q. 291. Will you state something about the literature that The Chemical Foundation distributed?

A. Dr. Slosson was the editor of The Independent, and while there he had published articles which were taken up by the Century Company and published in their scientific series. His book was called "Creative Chemistry." We had nothing whatever to do with the publication of the book, and never saw the book until it was on the shelves of the book-stores. The book, if you have it there, is written in popular language to show the dependence of a country upon its chemical

development, both in peace and in war, and written for the person who has had no opportunity to study chemistry, or no one to explain its importance to him.

We found that the basis of the German chemical success was its educated public opinion, which found expression in its support of the development of the industry through schools, through the universities, through the research institutions, through government protection and aid and through the sustenance of the different industries. We started out to instill such an understanding in this country.

We circulated 73,867 copies of this "Creative Chemistry," sending them to the agricultural agents, Chambers of Commerce, Congressmen, 16,000 to consumers and business men, 1,365 to educators and to Government employees, Kiwanis Clubs, libraries and librarians, newspaper editors, paint and oil manufacturers, Scout Masters of the country working in conjunction with the Boy Scouts under their Executive Council. We sent those to the Boy Scout Masters with directions to the Scout Masters to gather their boys together and read this book to them.

MR. KRESEL: I commend that to your Honor as one of the finest works that has ever been written, in language that a layman can understand.

THE COURT: Do you want to give this book a number for identification?

MR. KRESEL: I think, your Honor, that would be a good idea.

(Marked "Defendant's Exhibit L" for Identification.)

A. (Continuing.) That was sent to all the schools and colleges and all the professors, not only the chemical professors, but other professors as well, because we found that the development of classical education

in this country had been entirely neglectful of a pandemic understanding of the sciences. So we sent them to the Trustees of the Universities and to all of the professors and members of the faculties and then to the students.

It is now the textbook in many of the colleges and schools. For instance, the State of Ohio requires it in every public school in the State and the publication of the book led Mr. Scripps of Scripps,-McCrea & Company to endow Mr. Slosson of the National Research Council with a gift of $500,000, the income of which is to be devoted to the spread of scientific literature in popular language throughout the country.

Q. 292. Will you proceed to the next step?

A. The next most important one is "The Future Independence and Progress of American Medicine in the Age of Chemistry."

We went to the American Chemical Society and asked them if their Committe on the relation of chemistry to medicine would work with us. They appointed a sub-committee consisting of Professor Stieglitz of Chicago, Reid Hunt of Harvard, Theat Johnson of Yale, F. R. Eldred of Eli Lilly & Company, Professor John J. Abel of Johns Hopkins, Professor Alsberg, the President of the Food Research Institute, Stanford University, then chief chemist of the Bureau of Agriculture, Raymond F. Bacon, Director of the Mellon Institute for Industrial Research at Pittsburgh, Mr. F. O. Taylor and Dr. Herty.

These gentlemen spent a year and a half reducing to popular expression the true relation and hope of medicine worked out in connection with chemistry for the future and we then sent out 620,000 copies of this report to the physicians and surgeons asking for the consideration of the report by physicians and surgeons, by mothers and fathers, by educators, hospital

directors and trustees and by others whose hearts are interested in the welfare of the future generation of American children. This was sent to every doctor in the country; it was sent to all the libraries, to all the clergymen, to 620,000 leading persons and if I may say so has worked a revolution in the study of medicine in this country.

MR. KRESEL: May I have that marked in the same way for identification?

(Marked "Defendant's Exhibit M" for Identification, 7/2/23.)

THE COURT: Is it the purpose to go through each of those?

MR. KRESEL: No, your Honor, there are only two or three.

A. (Continuing.) The next is "The Riddle of the Rhine." As, "Creative Chemistry" was intended to show to the country the necessity for the development of chemistry in reference to our industries and as the report of those famous scientists was supposed to demonstrate to the country its necessity of developing organic chemistry as a basis for the future development of medicine; so we took the best book known on the effect of gas warfare on the future of National Defense and chemistry. This book was written by Victor LeFevre who was a member of the English General staff and was really written under the supervision and direction of the British General staff with an introduction by Brig. General Henry Wilson who you remember was shot in the streets of London.

It was translated into French. I should have a copy of that. The introduction there was written by Marshal Foch and circulated through France. It is called "The Riddle of the Rhine" and gives the history of the use of chemical warfare and an explanation of it, written upon the theory that the peace resolution

and such pacifist stuff as that will never tend to end war; that a truthful understanding of the facts of what the next war will be is a better basis and a better hope for peace than idle swashbuckling gestures.

Q. 293. Mr. Garvan, without going into any further details of books——

A. I think the rest almost show themselves what they were.

THE COURT: Do you want this last book marked?

MR. KRESEL: Yes, your Honor.

(Book entitled "Riddle of the Rhine" marked "Defendant's Exhibit N for Identification, 7/2/23.")

Q. 294. Mr. Garvan, I wish you would return to the statement of income and expenses that we were discussing, which is Defendant's Exhibit No. 91.

A. Yes, sir.

Q. 295. The total of expenses not including the educational expense were $507,361.27, according to this Exhibit No. 91?

A. Yes, sir.

Q. 296. That, however, covers all your expenses not only on patents but also on trademarks, contracts, and so forth?

A. Yes, sir.

Q. 297. By the way, before you get away from it, did The Chemical Foundation ever realize anything on copyrights?

A. Not a dollar.

Q. 298. How much has The Chemical Foundation realized on the trademarks that were conveyed to it by the Alien Property Custodian?

A. Eleven thousand dollars.

Q. 299. Exactly? You will find it on that exhibit that you have before you. How much is the amount?

A. Eleven thousand one hundred and ninety-six dollars and seventy-six cents.

Q. 300. The proportionate amount of the total expenses not including educational work that is applicable to patents, was how much?

A. Two hundred and eighty-five thousand four hundred and thirty-four dollars and eight cents.

A. $285,434.08.

Q. 301. What period does that cover?

A. Up to December 31, 1922, from April 10th, 1919.

Q. 302. If you divide the gross expense of $285,438.08 over the 4919 patents, what would be the gross expense per patent for the period?

A. Seventy-eight dollars and thirty-six cents for the period; $20.90 per year.

Q. 303. You have already told us that the gross income per patent per year, was $35.87; is that right?

A. Yes, sir.

Q. 304. If you will deduct the gross expense per patent per year which you say is $20.90, that leaves you a net return per patent per year of how much?

A. Fourteen dollars and ninety-seven cents.

Q. 305. That does not, however, include the educational expense?

A. It does not.

Q. 306. The educational expense of $340,245.76, added to the proportionate general expense on patents of $385,438.08 gives you a gross expense of how much?

A. Seven hundred and twenty-five thousand six hundred and eighty-three dollars and eighty-four cents.

Q. 307. And divided over 4,919 patents, that would give you for the period a gross expense on each patent of how much?

A. One hundred and forty-seven dollars and fifty-two cents for the period and $39.34 for the year.

Q. 308. And the gross income per patent per year was $35.87. Now, if you deduct the gross income from the gross expense, it leaves you a deficit per patent per year of how much?

A. Three dollars and forty-seven cents is the deficit.

Q. 309. And your books do show that your deficit has run up into——

A. One hundred and forty-seven thousand six hundred and eighty-one dollars and twenty cents.

Q. 310. In compiling your figures have you made any allowance for the amortization of the patents?

A. We have not.

Q. 311. Have you allowed any interest on the investment?

A. We have not. We have never paid any interest on our capital.

Q. 312. Have you paid any dividends on your stock?

A. No, not a cent.

Q. 313. Either common or preferred?

A. No, sir.

Q. 314. Can you state how much is the total income which The Chemical Foundation has received upon licenses covering the so-called nitrogen patents?

A. Yes, sir.

Q. 315. Please state it.

A. Total up to date, up to December 31, 1922, on all nitrogen and allied patents, numbering 131, and including all those formerly owned by the Badische Company, was $2,600.

THE COURT: Those are the Haber patents?

THE WITNESS: The Haber patents.

MR. KRESEL: Yes, sir, $2,600. I now offer in evidence a statement showing the cost to The Chemical Foundation of all patents and other

properties acquired by it from the Alien Property Custodian, which shows the total of $271,850. This shows the date when paid and what it was paid for.

THE COURT: A summary?

MR. KRESEL: A summary, yes.

THE COURT: It is admitted.

MR. KRESEL: I ask that it be marked.

Received in evidence and marked "Defendant's Exhibit No. 92." (*See Exhibits, Vol. IV, page 2666.*)

MR. KRESEL: I now offer in evidence a summary statement of income and other receipts and disposition thereof, from April 10, 1919, to December 31, 1922.

Q. 316. Mr. Garvan, I had omitted to ask you whether that last exhibit was correct. I show you Defendant's Exhibit 92. Was that made up from your books and is that a correct statement?

A. It is.

Q. 317. I now show you this summary statement of the income and other receipts from the beginning to December 31, 1922. Is that a correct statement from your books?

A. It is.

MR. KRESEL: I will ask that they be marked.

Received in evidence and marked "Defendant's Exhibit No. 93." (*See Exhibits, Vol. IV, page 2667.*)

MR. KRESEL: From this exhibit, your Honor, it appears that the total income, total receipts of The Chemical Foundation, up to December 31, 1922, from all sources, including the proceeds from the sale of its capital stock, was $1,128,825.83. Then the statement shows the disposition thereof, namely, payment to the Alien Property

Custodian $271,850, expenses chargeable to the conduct of the company's affairs, not including educational work, $507,361.27, educational work, $340,245.76, making a total of $1,119,457.03 expended. That leaves liquid net assets $9,368.80 as of December 31, 1922.

I now offer in evidence a summary showing the yearly expiration of income producing patents and amounts earned thereon, with percentage for each year, to the total number of income producing patents, and total amounts earned.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 94." (*See Exhibits, Vol. IV, page 2668.*)

MR. KRESEL: I now offer in evidence a statement showing the earnings on the 874 trademarks acquired from the Alien Property Custodian, from April 10, 1919, to December 31, 1922. That is both a summary and a detailed statement.

MR. ANDERSON: If your Honor please, on the question of this statement here, the summary showing the expiration of income producing patents and the amounts earned thereon, just introduced as Defendant's Exhibit No. 94, I have not had a chance to look at it, so I move to strike it out on the ground that it is no evidence of any conditions in the future, that the only and the best evidence of the dates of expiration of patents is the record of the date of the patent itself.

MR. KRESEL: Which is in evidence by your own exhibit.

MR. ANDERSON: It is in evidence. This summary does not mean a single thing as to the future. I do not know what is to be argued from it.

MR. KRESEL: I do not think, Colonel, you

quite understand the exhibit. Please let me explain it.

MR. ANDERSON: I certainly do not understand it. If it has anything to do with this case I do not know it.

MR. KRESEL: Then you cannot really argue about it. Let me explain it. This exhibit takes up the 491 patents on which licenses were outstanding, shows how many of those patents will expire each year, and how the income thereon will thereby be reduced. That is what it shows.

MR. ANDERSON: Then there is another objection still. That is a pure estimate.

MR. KRESEL: Now you have your objection.

MR. ANDERSON: Yes, I thought it was for the past. Of course I notice that ran up to 1937, and it is an estimate pure and simple how the income will be reduced; because *non constat* they might have greatly increased income from those patents, or the income from the patents, on account of decreased use of the stuff produced under them or the introduction of some other substitute, might be greatly reduced in the meantime, so that they would be of no value two years from now. What can it prove?

THE COURT: All of which goes to show the very difficult task of attempting to place any value upon patents.

MR. ANDERSON: Undoubtedly, and we have had that difficult task before us. But this is not evidence.

THE COURT: This goes to make up evidence with respect to the future based upon the facts in the past.

MR. KRESEL: Based upon what we know of it now.

THE COURT: Based upon actual facts.

MR. KRESEL: Exactly.

THE COURT: I will receive it, Colonel Anderson.

MR. ANDERSON: In other words, here we start out with the statement that for the years 1919 to 1922 inclusive there was 9.67 per cent of the patents terminated and $115,470.77 in those years was the revenue derived from these patents that have terminated. Of course, the number of patents that would terminate during the years given is well known, because that is a matter of calculation merely from the dates of the patents. Then we calculate the revenue to be lost by those patents. We have had the past, present, and now we have the future of every known human activity to deal with in this evidence. Here is something that is a pure guess. If the Court is going to decide this case on evidence of that kind we might just as well not put in any evidence.

THE COURT: It seems to me that is the best evidence of value that we have had, Colonel.

MR. ANDERSON: Then I say it is pretty weak evidence of value all along the line, if your Honor please. If that is the ground on which we are going to decide value in the case, we need not put in any evidence, let us guess at it.

THE COURT: No, I do not think it is a guess. If we cannot determine the future yield of a patent from what it has done in the past I do not see how you can reach any conclusion as to its value, and it seems to me the very best possible evidence and the evidence I had rather been expecting would be shown by you, and which you did show so far as the Trade Commission was concerned, is what they had yielded. This is only a summary

and I could work out for myself, taking the date that the patent had expired, how much would be the expected yield, taking the life of those patents, and how much it would diminish if there was no change in the situation. It seems to me you have done the same thing generally, except that you have not carried it to the same conclusion with respect to the Trade Commission patents. These patents will yield so much money if nothing happens to vary its income during its life.

MR. ANDERSON: The patents that have been licensed will yield so much money provided the present ratio is continued and there is no increase or decrease in the amount of production under those patents. When they expire, of course, assuming the same ratio of production is maintained at that time as today, there will be an added loss of revenue.

THE COURT: With one provision, namely, that there is no change in the situation, this shows the future income.

MR. ANDERSON: Of course I do not want to argue the question, I just want to note my objection.

THE COURT: It goes to the weight of the testimony in any event.

MR. ANDERSON: Very well, sir.

THE COURT: And it seems to me it has some merit as a compilation by counsel or the witness.

MR. ANDERSON: It may help us in arguing the case, but that is all it can do.

THE COURT: Do you want to go on, Mr. Kresel?

MR. KRESEL: There is a question left unanswered. I will do anything your Honor desires.

THE COURT: I have been hoping that you

would take up the extra hour. I wonder if we could take this additional hour in the future.

MR. KRESEL: I would be very glad to do it.

THE COURT: I do not want to place a burden on the defendant any more than I did on the plaintiff, but if you find that the additional hour does place too much of a burden on you I will take it off. Unless you do find it a burden I hope we may sit until four o'clock instead of three o'clock Eastern Standard time. We will adjourn court now until 8:30 o'clock tomorrow, Eastern Standard time.

(Whereupon, at 4:00 o'clock Eastern Standard time, adjournment was taken until tomorrow, July 3, 1923, at 8:30 o'clock A. M., Eastern Standard Time.)

Wilmington, Delaware,
July 3rd, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:
HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

FRANCIS P. GARVAN, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. KRESEL:

MR. KRESEL: Your Honor please, yesterday Colonel Anderson made the suggestion that on Defendant's Exhibit 83, which your Honor will recall was a statement of what licenses have been issued, there be added a column showing the form of license that was used in each case. I have had that done, Colonel Anderson; I have had a new column put in showing the form of license that was used in each case. We should like to substitute another copy for the Defendant's Exhibit 83 now in the case, this other copy having the necessary detail. Therefore I would like to have this copy I have here now marked in place of the other.

THE COURT: Let the substitution be made, without objection.

The same was so marked, Defendant's Exhibit No. 83. (*See Exhibits, Vol. IV, page 2583.*)

MR. KRESEL: Your Honor will recall that yesterday a question arose in connection with Mr. Garvan's testimony that he was not a stockholder of the Chemical Foundation. I have produced

here the original voting trust certificate books and the voting trust certificate books for the preferred and common stock, also the transfer sheets, and I have submitted those to Colonel Anderson. I state that these records show that neither Mr. Garvan, nor Mr. Corbett nor Mr. McKay at any time held any of the stock or any voting trust certificate representing any stock in this Chemical Foundation. I understand Colonel Anderson is satisfied as to that.

MR. ANDERSON: I have examined these books this morning and do not find that Mr. Garvan or Mr. Corbett or Colonel McKay were ever registered owners of any of the common or preferred stock or voting trust certificates of the Chemical Foundation, as stated by counsel. I tried to make it clear yesterday that my point merely went to the question of the subscription right and I did not want that foreclosed.

THE COURT: Is Mr. McKay still a director?

MR. KRESEL: He is no longer a director.

THE COURT: There is no contention that his successor had any of the stock?

MR. ANDERSON: No, I do not think there is any question about that. He did not have any of the common stock.

MR. KRESEL: The Court's inquiry is as to whether there is any claim that Colonel McKay's successor as director had any stock holdings. I understand there is no such claim.

MR. ANDERSON: I do not make any such claim.

THE COURT: What was his name?

THE WITNESS: Haaren.

MR. KRESEL: If your Honor please, I am going to ask the privilege of having Defendant's Exhibits L, M and N for Identification, marked in evidence, with the understanding that they are

not to be printed, but that each side may refer to those in the same way that we marked two or three that were introduced yesterday. Is there any objection, Colonel?

MR. ANDERSON: No.

THE COURT: The same as 49 and 50, 48 and 51 being Government exhibits. Let them be so marked.

Defendant's Exhibit L for Identification received in evidence and marked "Defendant's Exhibit No. 96." (*Not printed.*)

Defendant's Exhibit M for Identification received in evidence and marked "Defendant's Exhibit No. 97." (*Not printed.*)

Defendant's Exhibit N for Identification received in evidence and marked "Defendant's Exhibit No. 98." (*Not printed.*)

MR. KRESEL: And in this same connection I am going to ask your Honor to indulge me a little further.

Q. 318. Mr. Garvan, I show you a pamphlet entitled "An exhibit prepared under the auspices of the National Research Council with the co-operation of the Chemical War Service of the United States Army", and ask you whether The Chemical Foundation distributed that pamphlet? And if so, please state the extent of the distribution.

A. They published and distributed to the extent——

Q. 319. Published at its own expense?

A. At the Foundation's expense.

Q. 320. Yes?

A.—to the extent of 580,240 copies, that going to soldiers and colleges and Chambers of Commerce, much the same list as Scout Masters—much the same list. That was a chemical exhibit to show the relation between the organic chemical industry and our national

defense, which exhibit is now in the Smithsonian Institute that I referred to yesterday.

MR. ANDERSON: Now just ask him to stick to the question, because the contents of that exhibit I do not know anything about, and I would rather have it stricken out.

MR. KRESEL: I am going to introduce it anyhow. I doubt if it does any harm. But if Colonel Anderson insists, I will consent that that part be stricken out.

I offer that exhibit in evidence.

MR. ANDERSON: I note an objection to the introduction of this paper on the grounds of the general objection and on the further ground that it is not evidence of any facts as against the plaintiff here. I do not know the contents of the paper, but a paper issued under the circumstances stated certainly would not be evidence against the plaintiff. I am perfectly willing, subject to my objections already taken, to have the paper identified as one of the papers distributed by the Chemical Foundation, but I do not think it is evidence in this case.

THE COURT: As I understand it, that is all it amounts to. I do not understand that the contents are introduced for the purpose of supporting any facts, but merely as indicating the character of the work being done by this organization.

MR. KRESEL: Quite right, your Honor.

MR. ANDERSON: To make it clear, I did not make the objection because I thought it was understood as to the books, etc., formerly introduced.

Received in evidence and marked "Defendant's Exhibit No. 99." (*Not printed.*)

Q. 321. Mr. Garvan, please state with reference to this pamphlet that I now show you, entitled "Depart-

ment of the Interior, Bureau of Education" as to whether the Chemical Foundation had anything to do with the publication or distribution of that?

A. It was gotten out by the Department of Education and we had to do with the extent of the circulation. I would have to look up those figures to see just how we cooperated. We either paid for the printing or the clerical work or something of that kind. That was distributed to every teacher in the United States, in High Schools, and I think the list was something like 75,000 of the teachers of the country. It has to do with what chemistry should be taught in High Schools.

MR. KRESEL: The pamphlet is entitled, "Department of the Interior, Bureau of Education, Bulletin 1920, No. 26, reorganization of science in secondary schools. A report of the Commission on the reorganization of secondary education, appointed by the National Educational Association" and appears to have been printed at the Government printing office. I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 100." (*Not printed.*)

Q. 322. This is the last one, Mr. Garvan. Please state with reference to this pamphlet entitled, "The Dyes Question," what connection if any the Chemical Foundation had with its publication or distribution, or both?

A. This is a reprint of an article by James Morton, Chairman of Scottish Dyes, Ltd. It shows——

Q. 323. Do not state what it shows. Simply state what the Foundation did with reference to it.

A. We reprinted it and distributed it to all the newspapers and editors of the country.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: The same objections and limitations apply to all these papers, I understand.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 101." (*Not printed.*)

Q. 324. Mr. Garvan, with reference to Defendant's Exhibit No. 87, which is the big license to the Government covering the 5700 patents, I omitted to ask you yesterday—at least I think I omitted to ask—what consideration the Government paid the Alien Property Custodian for that license and release.

A. $100,000.

Q. 325. Mr. Garvan, did you have prepared and do you now produce a statement showing the earnings on the 874 trademarks acquired from the Alien Property Custodian by the Chemical Foundation covering the entire period from April 10, 1919 to December 31, 1922?

A. I did.

Q. 326. And is this the statement (handing paper to witness)?

A. It is.

MR. KRESEL: Colonel, this is a summary and a detail sheet attached to it. I offer that in evidence.

THE COURT: With the same force and effect as if testified to in detail by the witness?

MR. KRESEL: Yes, your Honor.

THE COURT: So admitted.

Received in evidence and marked "Defendant's Exhibit No. 102." *(See Exhibits, Vol. IV, page 2671.)*

Q. 327. Using that exhibit, Mr. Garvan, please state the total earnings by the Chemical Foundation from these trademarks for the period beginning April 10, 1919 and ending December 31, 1922.

A. $11,196.76.

Q. 328. And the average annual gross income thereon was what?

A. $2,985.80.

Q. 329. For each trademark what was the average annual gross income?

A. Three dollars and forty-two cents.

Q. 330. Have you had calculated the proportion of the expenses of the company applicable to the trademarks?

A. I have.

Q. 331. What proportion to each trademark?

A. Twenty dollars and eighty-eight cents.

Q. 332. Per year?

A. Per year.

Q. 333. Have you added thereto the interest on the investment, proportionately?

A. At six per cent., $4.12.

Q. 334. How much?

A. Four dollars and twelve cents.

Q. 335. Have you had calculated the amortization thereon?

A. I have.

Q. 336. How much does that amount to?

A. Three dollars and seventy-four cents.

Q. 337. If you add the proportion of expense, the interest on the investment and the amortization, that gives you a total outlay of how much?

A. Twenty-eight dollars seventy-four cents.

Q. 338. Per year?

A. Per year.

Q. 339. Per trademark?

A. Per trademark.

Q. 340. And the gross income per year per trademark is how much?

A. Three dollars forty-two cents.

Q. 341. What is the difference?

A. What difference do you mean?

Q. 342. The difference between the gross expense and the gross income per trademark per year?

A. Twenty-five dollars thirty-two cents is the deficit.

Q. 343. That is a loss of that amount?

A. Yes.

Q. 344. Have you had prepared a statement of income received by The Chemical Foundation on the salvarsan and neosalvarsan patents?

A. I have.

Q. 345. Please state first how many licenses the Chemical Foundation has issued covering those patents, giving the names of the licensees.

A. Five.

Q. 346. Will you give the names?

A. Abbott Laboratories, Incorporated, who succeeded to the Schamberg license in Philadelphia; E. R. Squibb & Sons, Malinckredt Chemical Company; Powers Weightman Rosengarten & Company; Empire State Chemical Company. Then there was an infringer from whom we collected $150.

(No Q. 347)

(No Q. 348)

Q. 349. Who was that?

A. E. J. Lukenback.

Q. 350. Please state the total amount that was collected by The Chemical Foundation between April 10, 1919 and December 31, 1922, on these salvarsan and neosalvarsan patents, on licenses issued by The Foundation.

A. Do you mean to include the Dermatological after it came to us?

Q. 351. Yes.

A. $37,503.14.

Q. 352. That is the total collected by The Chemical Foundation?

A. Yes, sir.

Q. 353. In that amount is there any amount included that was paid under a license that was made by the Federal Trade Commission?

A. Oh, no. No, it is paid by a licensee of The Federal Trade Commission.

Q. 354. That is what I mean.

A. But after he had surrendered his license to The Federal Trade Commission and taken out a license from us.

Q. 355. Who was that?

A. That was the Dermatological of Philadelphia, the successor of whom is the Abbott Laboratories of Chicago.

Q. 356. Dermatological Research Laboratories?

A. Yes.

Q. 357. I wish you would sub-divide, if you will, the total amount collected, which you say was $37,503.14, as between the amount paid by the Dermatological Research Laboratories, which had been a licensee of The Federal Trade Commission, and those licenses that were originally issued by The Chemical Foundation.

A. The Dermatological people, who formerly held the license from The Federal Trade Commission have paid us $31,466.60.

Q. 358. $31,466.60?

A. Yes sir, or 83-9/10 per cent. of our entire collections on arsphenamine and neoarsphenamine.

Q. 359. And when you say arsphenamine and neoarsphenamine, you are talking about the same patents that I have described as the salvarsan and neosalvarsan patents?

A. Yes, arsphenamine is the American name.

Q. 360. The total amount collected by The Chemical Foundation on licenses issued direct by it was how much?

A. $6,036.54, or 16-1/10 per cent. of our total.

Q. 361. And in this statement that you have had prepared and as to which you are now testifying, have you given in detail the amount received from each of your licensees?

A. I have.

MR. KRESEL: I offer that in evidence.

THE COURT: For the same purpose as the preceding licenses?

MR. KRESEL: Yes, your Honor.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 103." (*See Exhibits, Vol. IV, page 2674.*)

Q. 362. Mr. Garvan, it has been testified here that 57 so-called pre-war contracts had been assigned to The Chemical Foundation by the Alien Property Custodian. Has the Chemical Foundation received any return on those pre-war contracts?

A. It has.

Q. 363. Have you had prepared a statement showing the amount so received?

A. Yes, I have.

Q. 364. And do you produce the statement and is this it (handing paper)?

A. It is.

MR. KRESEL: We offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Deant's Exhibit No. 104." (*See Exhibits, Vol. IV, page 2675.*)

Q. 365. Please state the total amount that The Chemical Foundation received on those pre-war contracts between April 10, 1919 and December 31, 1922.

A. Two thousand four hundred forty-two dollars six cents.

Q. 366. Can you tell us, Mr. Garvan, how many

patents were assigned by the Alien Property Custodian to The Chemical Foundation? Have you a statement there?

A. A statement of what?

Q. 367. How many patents were assigned to The Chemical Foundation?

THE COURT: Was that not given yesterday?

MR. KRESEL: Yes, your Honor; but your Honor will recall that the number given, 4,919, included some applications that had matured into patents.

THE COURT: Yes.

MR. KRESEL: I want to get the number of patents as such and then take up the applications.

A. They marked those papers of mine in evidence, the copies I had. They are not here.

Q. 368. Will you use this, then, please? (Handing paper) Just state how many patents.

A. Four thousand seven hundred sixty-four patents.

Q. 369. And how many applications?

A. Two hundred eighty-eight.

Q. 370. And how many trademarks?

A. Eight hundred seventy-four.

Q. 371. And how many copyrights?

A. Four hundred ninety-two.

Q. 372. And how many pre-war contracts?

A. Fifty-seven.

Q. 373. So that giving to these things the general term of "properties", how many properties were assigned?

A. Six thousand four hundred seventy-five.

Q. 374. Have you had prepared a statement showing the earnings on these 6,475 properties so acquired from The Alien Property Custodian between April 10, 1919 and December 31, 1922, with data and results in respect to the various sources of income and expense thereon?

A. I have.

Q. 375. And is this the statement? (Handing paper.)

A. It is.

MR. KRESEL: I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 105." *(See Exhibits, Vol. IV, page 2676.)*

Q. 376. As I understood your testimony yesterday, it was to the effect that your income on patents was of two sources?

A. Yes, sir.

Q. 377. Income on manufactures and income on imports?

A. Yes, sir.

Q. 378. Have you divided the total income on patents, which you testified yesterday was $661,706.28, into those two classes?

A. I have.

Q. 379. Will you state how much was collected by The Chemical Foundation under its licenses covering manufactured products?

A. Two hundred ninety-six thousand two hundred thirteen dollars forty-one cents.

Q. 380. And what period does that cover?

A. That covers from April 10, 1919 to December 31, 1922.

Q. 381. How much was collected by The Chemical Foundation during that same period on imports?

A. Three hundred sixty-five thousand four hundred ninety-two dollars eighty-seven cents.

Q. 382. And that gives you a total of how much?

A. Six hundred sixty-one thousand seven hundred six dollars twenty-eight cents.

Q. 383. Now please add thereto, if you will, the amount collected on contracts?

A. Two thousand four hundred forty-two dollars six cents.

Q. 384. And the amount collected on trademarks?

A. Eleven thousand one hundred ninety-six dollars seventy-six cents.

Q. 385. Please state whether those three items constitute the total income received by The Chemical Foundation during this period on all the properties assigned to it by The Alien Property Custodian.

A. Yes, sir.

Q. 386. What is the grand total?

A. Six hundred seventy-five thousand three hundred forty-five dollars ten cents.

Q. 387. Will you state whether you have had calculated the annual return?

A. Annual gross return?

Q. 387 (continued). Annual gross return on those 6,475 properties?

A. I have.

Q. 388. And how much annually does it amount to?

A. $181,436.04.

Q. 389. Have you had that dividend so as to determine what the annual gross return was on each property?

A. I have.

Q. 390. And how much does that show?

A. $28.02.

Q. 391. Have you had calculated the amount of the expense applicable to each property acquired from The Alien Property Custodian?

A. I have.

Q. 392. And what does that show per year?

A. $20.88.

Q. 393. And have you added thereto interest on your investment at 6 per cent?

A. We have.

Q. 394. And what does that amount to per property?

A. $4.12.

Q. 395. Each year?

A. Each year.

Q. 396. And have you allowed for amortization of these properties per year?

A. We have.

Q. 397. And how much does that amount to per property?

A. $3.74.

Q. 398. What is the total of the expense, interest on investment and amortization of properties per year, per property?

A. $28.74.

Q. 399. And what does that show comparing it with the gross income per property?

A. It shows a net loss of 72 cents per property, per year.

Q. 400. Have you had prepared, Mr. Garvan, a statement showing the division of earnings from patents as between product and process patents?

A. We have.

Q. 401. Covering what period?

A. April 10, 1919 to December 31, 1922.

Q. 402. And have you had prepared a summary and a detail schedule for each patent?

A. We have.

MR. KRESEL: We offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 106." (*See Exhibits, Vol. IV, page 2677.*)

Q. 403. Have you had prepared and do you now produce a statement of earnings from royalties and license fees by individual patents, showing what each patent earned?

A. We have.

Q. 404. Covering what period?

A. April 10, 1919 to December 31, 1922.

MR. KRESEL: I offer that in evidence.

Received in evidence and marked "Defendant's Exhibit No. 107." (*See Exhibits, Vol. IV, page 2689.*)

Q. 405. Have you had prepared a statement showing the income received by the Chemical Foundation on the tanning patents which had been assigned by the Alien Property Custodian to the Chemical Foundation?

A. We have.

Q. 406. Were you present in court when Dr. Holdermann testified with reference to these tanning patents?

A. I was.

Q. 407. Have you had the statement that we are now discussing so prepared as to cover all of the tanning patents that Dr. Holdermann testified about?

A. We have.

Q. 408. And have you included in the statement any other tanning patents?

A. First, all that he testified about; second, our other tanning patents; then the total; each group totalled and then the two groups totalled.

MR. KRESEL: We offer this in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 108." (*See Exhibits, Vol. IV, page 2699.*)

Q. 409. Will you please state what was the total amount of income received by the Chemical Foundation, for the period from April 10, 1919 to December 31, 1922, upon the tanning patents testified to by Dr. Holdermann?

A. $9546.82.

Q. 410. And that included how many of these tanning patents?

A. Thirteen.

Q. 411. Has the Chemical Foundation received any income on other tanning patents?

A. It has.

Q. 412. On how many additional ones?

A. Three.

Q. 413. And what is the total amount received on those three for the period mentioned?

A. $1,876.47.

Q. 414. What is the total amount of income received by the Chemical Foundation during the period stated on all the tanning patents?

A. $11,423.29.

Q. 415. Can you state from this last exhibit the date when the first of those tanning patents was issued?

A. Yes, sir.

Q. 416. What is the date?

A. The 9th day of September, 1919.

Q. 417. I think you are in error about that. The date when it was issued—the patent and not the license.

A. I beg your pardon, I thought you said the license.

Q. 418. No, I mean the date of the patent.

A. The 10th day of March, 1914.

Mr. Kresel: Perhaps your Honor would like to know the reason I asked that question, and I think it is well your Honor should know. Your Honor will recall that Dr. Holdermann undertook to testify to the value of these patents as if the patents were in existence in 1913, and it is as of that date that he gave the German income on

these patents. I am reminded that he also testified that in that year 1913 the Germans received $5,000 as income from imports under these patents, when in point of fact the patents had not even been issued.

MR. ANDERSON: Had application been filed?

MR. KRESEL: Yes, the application had been filed, but they do not receive income on a patent that is not in existence, even though an application is filed, do they?

Q. 419. Have you prepared a statement, Mr. Garvan, showing a comparison of the values of the domestic and imported dyes covered by the patents owned by the Chemical Foundation, as against domestic and imported dyes used in the United States that were not so covered?

A. I have.

Q. 420. For what years have you had that done?

A. 1919, 1920, 1921. The figures of the Tariff Commission are not out for 1922.

Q. 421. The figures as to dyes covered by your patents of course you took from your records?

A. Yes, sir.

Q. 422. The figures as to the country's use you took from the Tariff Commission reports?

A. Yes, sir. The figures for ourselves include 1922.

Q. 423. I understand. Is this the statement that you have had prepared upon the subject (handing witness)?

A. Yes, sir.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: If your Honor please, I have not objected to these statements because, of course, I can test the witness's knowledge of them and then make such motion as the situation may

require, instead of objecting at this time. But I do object to a statement not only made up from the witness's books, but from various documents and records not produced here and which we know nothing about.

MR. KRESEL: We have the Tariff Commission reports.

MR. ANDERSON: (continuing) And which we have had no chance to examine; because we have never seen these statements, never saw them until they were offered in evidence, and had no opportunity to check them. These statements come from a witness who I do not think could qualify to speak on that subject of his own knowledge. Therefore I will have to object to the introduction of this statement, and if it be introduced of course I shall reserve the right to test his knowledge to the fullest extent.

THE COURT: Do you propose to offer the records from which this statement or tabulation is prepared?

MR. KRESEL: I am just about to offer the Tariff Commission reports. I did not think it would be necessary to do it at this time, but I quite recognize Colonel Anderson desires me to do it. I shall now offer in evidence the report of the United States Tariff Commission for the year 1920. The pamphlet is entitled "Tariff Information Series No. 23 Census of Dyes and Coal-Tar Chemicals 1920."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 109." (*Not printed.*)

MR. ANDERSON: I have not seen that report. Do you think it is necessary to print that entire report?

MR. KRESEL: I doubt it very much. I think we can agree upon what portions should be printed; of course, with the understanding that each side may refer to any other portion.

THE COURT: When you have some leisure after this trial ends, if you can agree upon a tabulation of the facts that you want, taken from those records, if the Government sees fit to agree —I do not know whether it will and I do not suggest that it will or should agree. But the Government and the defendant might agree that the tabulation is correct and then these can in effect be withdrawn.

MR. KRESEL: Yes. I offer in evidence the report of the United States Tariff Commission for the year 1921. It is entitled "Tariff Information, Series 26, Census of Dyes and other Synthetic Organic Chemicals for 1921."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 110." (*Not printed.*)

MR. KRESEL: I offer in evidence a report of the United States Tariff Commission for the year 1919 entitled "Tariff Information, Series 1922, Census of Dyes and Coal Tar Chemicals for the year 1919."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 111." (*Not printed.*)

MR. ANDERSON: If the Court please I am perfectly willing to agree with counsel now, assuming that there are available copies of that report, that none of those reports be printed in the record of this case, but, being official publications of

the Government, either side may refer to them in argument and use such portions thereof as they may desire in their briefs without printing them in the record; because I have no doubt they are available, and if that is the case, it would be quite a useless expense on either side to print all that statistical data, nine-tenths of which has no application to this case.

MR. KRESEL: We are both trying to arrive at exactly the same result and we will cooperate with the Government in any way that will be necessary.

THE COURT: It may be all right to do that for one or two exhibits. As far as I am concerned, I am not particularly interested. As far as the Appellate Courts are concerned, it might be well to consider whether it is practical to leave out very many from the record.

MR. ANDERSON: I do not think it could be done to any extent, but as to these official reports of the Tariff Commission which have just been introduced, I have no doubt a number of copies are available and could be furnished to the Appellate Court if desired. By agreement of counsel, they could be eliminated from the printed record, this being always in this Court for verification of the correctness of the copy used. That would save an enormous expense.

THE COURT: I think it is well to leave out as much as you can, but I do not want to be a party to an understanding——

MR. ANDERSON: I merely make that suggestion to counsel at this time, because he might overlook it after the trial.

MR. KRESEL: I offer in evidence a report of the United States Tariff Commission entitled

"Report on Dyes and Related Coal Tar Chemicals, 1918, printed for use of the Committee on Ways and Means of the House of Representatives."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 112." (*Not printed.*)

MR. KRESEL: I offer in evidence a report of the United States Tariff Commission entitled "Tariff Information, Series No. 15, Costs of Production in the Dye Industry, 1918 and 1919, details of costs for a selected list of dyes and intermediates."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 113." (*Not printed.*)

MR. KRESEL: I offer in evidence a report of The United States Tariff Commission, entitled "Tariff Information, Series No. 11, Census of Dyes and Coal Tar Chemicals, 1918."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 114." (*Not printed.*)

MR. KRESEL: I offer in evidence a report of the United States Tariff Commission for 1917 which is entitled, "Tariff Information, Series No. 6, Census of Dyes and Coal Tar Chemicals, 1917."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 115." (*Not printed.*)

MR. KRESEL: I offer in evidence a publication of the Department of Commerce, Bureau of Foreign and Domestic Commerce, entitled "Special Agent, Series No. 121, on Artificial Dye Stuffs used in the United States, quantity and value of

foreign imports and of domestic production during the fiscal year 1913-1914."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 116." (*Not printed.*)

Q. 424. Mr. Garvan, we will return to the question last asked you, the statement that you say you had prepared with reference to the comparison of dyes covered by your patents and the total dyes used in the United States. Is this the statement that you speak of?

A. It is.

By THE COURT:

Q. 425. Was that prepared by this witness?

A. Under my direction, yes.

Q. 426. Did you check it up?

A. I did not add it up.

THE COURT: I was wondering whether that statement should not better come from the person who did the work rather than from this witness. It could be embodied in your brief as a tabulation, but I do not see how it can be given any strength by the fact that this witness asked to have it done, when he did not do it. Do you? I have no objection——

MR. KRESEL: No, your Honor; I do not want it put in if your Honor is not going to give it the weight that I want your Honor to give it.

THE COURT: I shall be glad to have a tabulation of course. It would be convenient and useful, but I understood one of Colonel Anderson's objections to this was that it was not prepared by this witness.

MR. KRESEL: I was trying to avoid the necessity of calling another witness, but I quite recog-

nize that Colonel Anderson has a right to insist that I call the man who made the actual tabulation; and I shall do it. I withdraw the question.

THE COURT: Am I correct, Colonel Anderson?

MR. ANDERSON: You are correct. In order that Mr. Kresel may understand my point at this time, I might say that when we were trying to put in evidence on this subject, we furnished statements in advance to counsel. I am not saying that he is not acting well within his rights. I am not implying any criticism because these are very difficult things to prepare. When we introduced our statements, they were checked, but even then we had to produce original records.

If I knew the actual facts were as set forth in this statement, I would just as soon agree to them on the record as to have the statement proved by the witness. I am practical in these things. But these are very voluminous statements and cover an enormous range of territory. We have never seen them until they were handed to us in Court. I will facilitate the introduction of the evidence in every way I can, but I must protect the question of its accuracy.

THE COURT: So far as I am concerned, it is immaterial whether that appears as an exhibit in the exhibit books or whether it appears in an appendix to your brief, showing your understanding of what the Tariff Commission reports purport to show; and then if there is a difference between you, you can each do the same thing. It is immaterial to me whether it is in the exhibit book or in the appendix to the brief. It would have the same value either way unless put in by the person who actually made it.

MR. ANDERSON: Mr. Kresel, suppose you let

Mr. Garvan put it in and it will be understood that it will be subject to our checking. If I find it is correct, I will not move to strike out that particular statement, reserving the right as to the others. In other words, I want the facts to appear.

MR. KRESEL: I am very much obliged. Colonel Anderson states I may put it in by Mr. Garvan subject to correction, which of course is all right.

MR. ANDERSON: That applies to the particular statement that you are now referring to.

MR. KRESEL: Yes. I therefore offer this statement in evidence subject to correction.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 117." (*See Exhibits, Vol. V, page 2703.*)

MR. ANDERSON: I just want to note on the record as to Defendant's Exhibit No. 117, in connection with the statement made by counsel as to its going in subject to checking, I also reserve the right to object to the notes of the compiler on this statement purporting to be explanatory thereof.

MR. KRESEL: That is perfectly all right.

By MR. KRESEL:

Q. 425. Mr. Garvan, looking at Defendant's Exhibit No. 117 that has just been introduced, will you state the total amount of sales of domestic dyes, according to the Tariff Commission reports, you understand, in 1919?

A. $67,598,855.

Q. 426. And in 1920?

A. $95,613,749.

Q. 427. And in 1921?

A. $39,283,956.

Q. 428. The total is what?

A. $202,496,560.

Q. 429. Looking at the figures covered by the patents of The Chemical Foundation, what was the income from domestic manufactured dyes in 1919?

A. $9,478.91.

Q. 430. Have you the total of such income for the years 1919 to 1922, inclusive?

A. Yes, sir.

Q. 431. And what is that?

A. $270,279.69.

MR. ANDERSON: If your Honor please, as to so much of this statement as is a compilation from those records, I am perfectly willing, subject to verification, to have the compilation go in for convenience of reference to the records that have been introduced.

As to so much of this statement as contains matter taken from the books of the Chemical Foundation, or as to the income of the Chemical Foundation, and the annotations of calculations and applications of percentages, and so forth, thereto, I reserve all rights, and I think I will be compelled to make a motion to strike out that part of it.

I am a little embarrassed, because I have not time to study these statements, and I do not want to embarrass counsel beyond the necessities of the situation.

MR. KRESEL: Colonel, I would not ask you to do anything which would foreclose your rights.

MR. ANDERSON: Yes.

MR. KRESEL: I am perfectly willing that you shall reserve the right at any time before the end of the trial to move or strike this out, after examination.

MR. ANDERSON: And of course, if that goes out, the examination of the witness on the record will also apply to the same thing.

MR. KRESEL: If there is any question in connection with what the Court grants your motion to strike out, then of course the testimony goes out.

MR. ANDERSON: With that understanding I will let the matter stand as it is, preserving all rights in that regard.

THE COURT: Do I understand that these other statements are made up from the books of the Chemical Foundation?

MR. KRESEL: Those that have already gone in, your Honor, or this last one?

THE COURT: The one to which Colonel Anderson just referred.

MR. KRESEL: Made up from both sources, the books of the Chemical Foundation and the Tariff Commission reports.

THE COURT: But Colonel Anderson does not object to the Tariff Commission reports. His last objection was directed to the tabulation from the books of the defendant, as I understood it.

MR. KRESEL: No, I think your Honor misunderstood Colonel Anderson. Your Honor will be better able to understand his objection if you have this before you (handing paper).

Your Honor will see the first two columns there show the amounts of sales of domestic producers as per the Tariff Commission reports and the income of the Chemical Foundation on domestic products. We had then put on the following calculation: "Based on average royalty of four per cent. the approximate value is $6,000,000"—it is really six million odd—"or 3.33 per cent. of the total domestic sales." It is that portion which I understand Colonel Anderson is challenging. He says he has not had time to examine——

THE COURT: That is a mathematical calculation.

MR. KRESEL: Yes, which I can make in my brief as well as I can have it made here.

MR. ANDERSON: No, I do not think Mr. Kresel understood me. I want to get it clear, I do not want any mistake. At the proper time on cross-examination it is my purpose to test the knowledge of this witness as to all statements which he has put in here, and when that time comes I will make such appropriate motion as I feel is necessary, striving not to be over-technical.

As to the Chemical Foundation income, that is a statement from the books of the Chemical Foundation, I have not tested the knowledge of this witness on that subject at all. As to the compilation from the official records of the Government, that is a mere matter of mathematics, and we can check it. If it is right I have no objection to its going in in this form; if it is wrong we can call attention it—following each of the statements taken from the Government reports for 1919, 1920 and 1921, which are compilations of official figures, official figures and argumentative statements, if I might so call them, taken from the records presumably of the Chemical Foundation. I did not wish my statement on the record that subject to verification this compilation might go in, and subject to first testing his knowledge, to apply, for the reason that I want to reserve if I am so advised the right to strike out all this evidence as to the statistics of the Chemical Foundation unless it be shown to have a proper foundation. Do I make myself clear now?

THE COURT: Do you mean by proper foundation that this witness has no personal——

MR. ANDERSON: Yes, sir; I want to know who

did make these statements, where they came from, their source and everything else when I come to examine this witness. Therefore I do not want to waive any rights in that regard. But as to these official compilations, if they are right I am perfectly willing to stipulate them on the record.

MR. KRESEL: I simply desire at this time to direct the Court's attention to the fact and to remind Colonel Anderson that there is a stipulation between the parties with reference to the use of the books of the Chemical Foundation. I think it was read into the record by Mr. Galloway at the opening of the trial. That is to the effect that either side may put in computations from the books of the Chemical Foundation without being required to produce those books; the Chemical Foundation, however, agreeing to produce any books at any time that the Government may desire to have produced.

MR. ANDERSON: I do not understand the stipulation to go to that extent, Mr. Kresel, and I think it is well to get it.

MR. KRESEL: I will find the stipulation.

MR. ANDERSON: Certainly I never intended to stipulate anything of that kind.

MR. KRESEL: I say now that if Colonel Anderson desires our books produced here they will be here just as soon as the train can bring them. Haven't you the original stipulation, Mr. Galloway?

MR. GALLOWAY: I have it, but I have not it here.

MR. KRESEL: I do not know whether this that I have here is a true copy or not.

MR. GALLOWAY: I think you will find that the only reference to the books of account of the Chem-

ical Foundation is back here on the schedule (indicating).

MR. KRESEL: No.

MR. GALLOWAY: That is the only reference I recall.

MR. KRESEL: Your Honor will grant me just a minute until I find what I have reference to.

I read from page 878 of the record. This is a part of the stipulation which was read in by Mr. Galloway, headed "Books of Accounts":

"It is further stipulated and agreed that the defendant need not produce its books of account upon the trial unless the plaintiff specifically requests the production of some particular book or books; that either side may use transcripts or extracts from said books subject to the right of either party to call attention to and have corrected any errors in such transcript, extract or compilation at any time during the trial and that in connection with the testimony of any witness as to compilations based on entries in said books, it shall not be necessary as a basis for such testimony to put said books in evidence."

I thought my recollection was correct.

MR. ANDERSON: I agree to that, but I do not think that removes the necessity for putting a witness on the stand to say that he himself made these statements and as an accountant is capable of testifying to them.

MR. KRESEL: Let me understand that. Do I understand Colonel Anderson now to claim that these compilations that we have spent half a day putting in are not competent because the accountant who made them is not put on? If so, counsel should have called attention to that before we spent half a day thereon. Of course, Mr. Garvan did not make them personally.

MR. ANDERSON: One minute now. If your

Honor please, as he says counsel should have called attention to that, I will say that I am following the exact procedure he has followed in putting in the other evidence. I put in various statements which had been checked by the accountants of the other side, by Mr. Storck.

The original records were not here, and counsel, on cross-examination of Mr. Storck, tested whether he personally had made up every one of those figures. He said they were made up by him or made up under his direction and he then called for the production of the original documents.

MR. KRESEL: I beg your pardon——

MR. ANDERSON: And we had to send to Washington and bring them and introduce the original records of the Federal Trade Commisson and the licenses.

MR. KRESEL: Colonel Anderson, please—you do me an injustice, and I will not——

THE COURT: I will give you all the time you want, Mr. Kresel.

MR. ANDERSON: When this witness was on the stand, I was perfectly willing to have this witness put in these statements to the end that he might say what he had to say about them, subject to my general objections to the evidence. I assumed that counsel would call then the man who made up the statements, and that is the reason this morning it occurred to me that I had probably better say so to test the knowledge of this witness as to the basis of these statements. Then in the event that counsel could cure that defect by producing the persons who actually made up the statements, the evidence of this witness as to the statements might be in the record, instead of recalling him and putting another witness on.

I thought it was serving the convenience and not inconvenience of this case. That is the reason I let the evidence go on in, although it has seemed to me that the witness had not been properly qualified. I did not want to have to break this evidence up by putting one witness on and then another witness, which embarrassment I suffered myself in the introduction of my evidence owing to such objections.

Mr. Kresel: The only objection that I have to Colonel Anderson's statement is an objection to that portion of it wherein he says that I insisted upon the production of original records. Your Honor will recall that I specifically stated more than once that I waived all questions of form.

Colonel Anderson produced the original records because I showed that the compilations that were made by Mr. Storck were valueless because he had not seen and had not put in the necessary detail into his compilations. It was not because I demanded the production of the original records at all, and you will read the record in this case from beginning to end and you will find that I made no such demand.

Now, I say that if any objection is to be taken as to the competency of putting in these compilations by Mr. Garvan, I think it might have been raised at the outset. However, I quite concede that Colonel Anderson has the right to insist on that, and if he does, I shall call the accountant who made them, so as to testify as to them. I have one more compilation and then I am through with that branch of it.

The Court: It seems to me, Mr. Kresel, that while you differ as to what transpired when Colonel Anderson was putting in his case, your recollection with respect to calling for the books

corresponds with my recollection, that he showed that Mr. Storck did not have from the books sufficient information to make up the statement which was made. But it seems to me that you are right, Colonel Anderson, in this particular: that you would be unable to ascertain from this witness that which Mr. Kresel ascertained from Mr. Storck; that is, if Mr. Kresel offers to prove the compilation by somebody who did not make it, then it is impossible to gather any information. So that I think in that particular Colonel Anderson's objection is well taken.

MR. KRESEL: I concede, your Honor, that it is entirely within his rights.

THE COURT: He is entitled to ascertain from the witness, as you did from his witness, as to whether this gives a correct tabulation or not, and that he can not ascertain from this witness on the statements now made. So that I think the objection is well taken.

MR. KRESEL: I want to say that the accountant who made this up is in town and I shall call him, so that Colonel Anderson may have the opportunity to examine him. May I proceed?

THE COURT: Yes.

Q. 432. Mr. Garvan, did you have prepared a comparison acording to the weight of dyes, domestic and imported, as between those covered by patents owned by The Chemical Foundation and the entire amount of dyes consumed in the United States according to the report of the Tariff Commission?

A. I did.

MR. KRESEL: Subject, your Honor, to the same reservation that Colonel Anderson made to the preceding exhibit, No. 117, we offer in evidence this statement.

MR. ANDERSON: I have not had a chance to

study it. I will let it go in subject to my reservation.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 118." (*See Exhibits, Vol. V, page 2704.*)

MR. KRESEL: I offer in evidence a copy of a letter from the Bureau of Trusts of the Alien Property Custodian signed by Charles B. Calvert, dated November 11, 1920, addressed to F. M. Eugen Blass.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 119." (*See Exhibits, Vol. V, page 2705.*)

MR. KRESEL: Your Honor will recall that there was a long line of correspondence put in by the Government with reference to a patent claimed by a man named Blass; that it was claimed we had not re-assigned to him. This letter is one of the series.

THE COURT: That patent covered what?

MR. KRESEL: I do not recall what it covered.

THE COURT: Was that the New Jersey incident?

MR. KRESEL: I do not think that was, and I do not recall what it covered; but that is the patent, you will recall.

THE COURT: If this is further correspondence in connection with the same matter, it is pertinent.

MR. KRESEL: Yes. I am not going to stop to read it now.

THE COURT: Very well.

Q. 433. Mr. Garvan, has the Chemical Foundation had occasion to bring any infringement suits against

persons infringing the patents owned by The Foundation?

A. Yes.

Q. 434. How many of those suits have been instituted?

A. There were some on the trademarks. I am not sure how far they went. I am not positive as to the actual filing. They were settled either just before filing or just after. I am not positive whether the lawyers filed——

MR. ANDERSON: I am afraid I will have to object to that record, sir, as to the question of a number of suits. While I think, of course, that the best evidence of any suit would be the record, I would not object, except for my general objections, to the number of suits, if he knows. But as to what the suits were about, whether they were infringement suits, or things of that kind, I do not think with my present knowledge I could let the evidence go in.

MR. KRESEL: I think the witness has a right to say whether they were infringement suits, and how many. That he has a right to do without producing the written record. I do not propose to go into a trial of those law suits. I am only trying to show what The Foundation had to do with it, and how much money it has spent thereon.

THE COURT: Your purpose being to show the reasons for the infringement suits?

MR. KRESEL: No, your Honor. I simply want to show how many infringement suits there were, and what it cost The Foundation to defend them, because your Honor will recall that one of the purposes and one of the duties set forth in the charter of the corporation is to defend these patents. Now I want to show that The Chemical Foundation did observe that injunction placed

upon it by its charter. I am not even going to ask the names of the persons against whom the suits were brought. I am not interested in that. If the Government desires to go into that on cross-examination, of course, the information is available.

THE COURT: I have not passed finally upon the question; but you may take your answer.

Q. 435. Just say how many of those suits.

A. One.

Q. 436. And how much has it cost?

A. Between twelve and fourteen thousand dollars.

Q. 437. It was testified yesterday that only 491 of the entire number of patents had ever brought in any income, had ever been licensed. What efforts, if any, did The Chemical Foundation make to get people to take out licenses on these patents?

MR. ANDERSON: I object to that question, in the first place, as too indefinite and general; and in the second place, because it calls for a conclusion as to the efforts to get these people to take out patents. I think the counsel can prove what is within the knowledge of this witness, if it be subject to our general and other specific objections. What was the effect or purpose of any specific acts of The Chemical Foundation, I do not think is evidence.

MR. KRESEL: I will withdraw the question.

Q. 438. What acts did the Chemical Foundation do, what steps did it take, to have people get licenses on these patents?

A. It sent out agents to all the industries to explain and interest concerns in the patents. It made analyses of the patents and issued booklets or books on the patents, and sent them to the various members of the industry who might be interested in the development of the patents.

Q. 439. Stop there, please. I show you first a booklet entitled "Temporary List of Patents and Copyrights transferred to The Chemical Foundation, Incorporated." Will you state whether that was compiled by The Chemical Foundation?

A. It was.

Q. 440. Will you state whether that was circulated?

A. It was.

Q. 441. Can you state the extent of the circulation?

A. I cannot.

Q. 442. In connection with that, I show you another publication entitled "Vat Dye Patents owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 443. Here is another pamphlet entitled, "Patents transferred to the Chemical Foundation, New York City, June, 1921." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 444. I show you another publication entitled "Drug and Medicinal Patents owned by the Chemical Foundation, Inc." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 445. I show you another pamphlet entitled, "Electro-Chemical and Electro-Metallurgical Patents owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 446. I show you another pamphlet entitled, "Paper Patents Owned by the Chemical Foundation." Was that published and circulated by the Chemical Foundation?

A. It was.

Q. 447. Were these all of the pamphlets, circulars and letters that were circulated by the Chemical Foundation in this connection?

A. Probably all the books and pamphlets, but it is not all the letters.

MR. KRESEL: Have you copies of these, Colonel Anderson?

MR. ANDERSON: No, we have not.

MR. KRESEL: Of course, these are now available, but we will try to get you copies. We had always understood that there were copies in your possession.

MR. ANDERSON: We have tried to find them. We have been told there were, tried to find them, but have not been able to.

MR. KRESEL: I am going to offer in evidence each of these publications.

Publication entitled "Temporary list of Patents" received in evidence and marked "Defendant's Exhibit No. 120." (*Not printed.*)

Publication entitled "Patents Transferred to the Chemical Foundation, Inc., June, 1921," received in evidence and marked "Defendant's Exhibit No. 121." (*Not printed.*)

Booklet entitled, "Vat Dye Patents" received in evidence and marked "Defendant's Exhibit No. 122." (*Not printed.*)

Booklet marked, "Drug and Medicinal Patents" received in evidence and marked "Defendant's Exhibit No. 123." (*Not printed.*)

Book entitled "Electro-Chemical and Electro-Metallurgical Patents" received in evidence and marked "Defendant's Exhibit No. 124." (*Not printed.*)

Book entitled "Paper Patents" received in

evidence and marked "Defendant's Exhibit No. 125." (*Not printed.*)

MR. ANDERSON: Mr. Kresel, you have no objection to withdrawing those from the Clerk, have you?

MR. KRESEL: Not at all, if the Court will permit it; I have no objection.

MR. ANDERSON: You will try to get us copies, because we need them?

MR. KRESEL: Yes.

THE COURT: Is that all of that group?

MR. KRESEL: Yes.

THE COURT: They are all admitted.

Q. 448. Mr. Garvan, I show you a copy of a letter addressed to Honorable Thomas W. Miller, dated May 23, 1922, and ask you whether that is a copy of a letter that you wrote to him as president of the Chemical Foundation?

A. It is.

MR. KRESEL: I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 126." (*See Exhibits, Vol. V, page 2707.*)

MR. KRESEL: This letter, your Honor, is dated May 23, 1922, and is addressed to Honorable Thomas W. Miller, Alien Property Custodian (reading).

Q. 449. Is this a copy of the reply that you had from Colonel Miller?

A. A photostat copy, yes.

MR. KRSEL: I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 127." (*See Exhibits, Vol. V, page 2708.*)

MR. KRESEL: This letter, your Honor, is dated

May 25, 1922, addressed to the Chemical Foundation and signed by Colonel Miller as Alien Property Custodian (reading).

I offer in evidence Article 167 of the Regulations of the Treasury Department with reference to the valuation of patents. I assume, your Honor, that you would take judicial cognizance of the Regulations of the Department; however, it is a short paragraph and I thought it better to specifically offer it.

MR. ANDERSON: Are those the Income Tax Regulations?

MR. KRESEL: Those are the Regulations on Income Tax.

MR. ANDERSON: Taken from the official publication?

MR. KRESEL: Taken from the publication of the—well, this is Income and other Federal taxes as affected by patents, trade-marks, copyrights and good will.

MR. ANDERSON: I do not know that that is correct. That is a textbook.

MR. KRESEL: Is there any objection to my putting it in subject to correction?

MR. ANDERSON: If your Honor please, if we are going to put in those regulations, which I do not think have any bearing whatever on this case because they relate to income tax, and the question of what values are to be considered in this case is a matter for this Court and not for the Treasury Department—I object to it on those grounds, and of course on the special grounds reserved to all this evidence. But if we are going to introduce the regulations of the Tax Department on any issue in this case, then I would want the official regulations, to the end that we may have them complete. I do not know whether the

text writer has undertaken to support his position by the extract or not.

MR. KRESEL: Very well, I have asked Mr. Mahaffy to see if he can get it from the library, the original, and for the moment I will put it aside. You are not willing to let me put it in subject to correction?

MR. ANDERSON: I do not want to take the burden of correction, Mr. Kresel. I think the whole regulation dealing with the subject should go in.

Q. 450. Mr. Garvan, what was the average life of the patents that were transferred to the Chemical Foundation on the date of the transfer?

MR. ANDERSON: I will just make my general objection.

A. Eight and a quarter years.

Q. 451. Prior to the receipt by the Chemical Foundation of the letter of demand signed by Colonel Miller as Alien Property Custodian, which has been put in evidence here, demanding the return by the Chemical Foundation of all the properties that had been transferred to it by the Alien Property Custodian, had any demand of any kind for the return of those patents been made upon the Chemical Foundation?

A. It had not.

Q. 452. Prior to July 1, 1922, which is the date of the President's letter to Colonel Miller, had you appeared before any committees of Congress and had you been questioned before any committees of Congress concerning the transfer of these patents to the Chemical Foundation?

A. I had.

Q. 453. Before how many such committees of Congress had you appeared and testified upon the subject, giving the dates when?

A. In about—I think the first one is about June, 1919, before the House Ways and Means Committee on

the pending Tariff Bill. Later, I think in July, before the Senate Finance Committee upon the hearings on the same Bill. In February, 1922, as I recollect it, before a sub-committee of the Senate Judiciary Committee, the so-called Shortridge Committee, because it was presided over by Senator Shortridge of California.

THE COURT: What was the matter upon which such hearings were had?

Q. 454. Will you please state as to each?

A. The first two were upon the pending provisions of the Tariff Bill asking for an embargo, a selective embargo, upon the importation of dyes and organic chemicals. The third was a sub-committee of the Judiciary Committee, acting under a Senate Resolution introduced by either Senator Moses or Senator King, I am not sure, to investigate an alleged dye monopoly and the relations of the Chemical Foundation.

THE COURT: Are you going to show at some time in this case what the outcome of those several investigations was?

MR. KRESEL: I am going to now, if your Honor will permit me. I think with your Honor's permission I will read a portion of the resolution under which that committee was acting, which will of course show the purpose of the proceedings.

MR. ANDERSON: If you are going into the question of the Shortridge Committee at all I should like the entire resolution to go into evidence; and the best evidence of what took place before the Shortridge Committee is its record.

MR. KRESEL: I have no objection to having the entire resolution go in, but I am going to read what I think is necessary to answer the Court's inquiry, and I think I will read the resolution without reading the preamble:

"RESOLVED, That the Committee on the Judiciary,

or any subcommittee thereof, is hereby authorized and instructed to investigate the charge that the dye industry is controlled by a combination of corporations which is in fact a monopoly and has employed agents, attorneys, and lobbyists to influence Congress in behalf of special legislation in the interest of such monopoly; to investigate the activities and methods of importers of dyes from Germany, and their agents, attorneys, and lobbyists to influence Congress in behalf of special legislation; and to investigate the dye and chemical industries of the United States, and the supply and distribution methods, within the United States and elsewhere, of the German dye and chemical industries, with a view to recommending proper legislation; and report its findings to the Senate, together with such recommendations as it may deem appropriate.

"RESOLVED FURTHER, That the Committee is authorized to subpoena witnesses," etc.

Q. 455. Mr. Garvan, according to the volume of proceedings before this committee, it commenced operations on February 20, 1922?

A. That is right.

Q. 456. And you appeared before that Committee, did you?

A. Yes.

Q. 457. And were questioned about the Chemical Foundation?

A. Yes, sir.

Q. 458. And these patents that were sold to the Foundation?

A. Yes, sir.

Q. 459. Do you know whether this Committee made a report to the Senate making any findings as to its investigation?

A. I do.

Q. 460. What is the fact about that?

A. It did not make any report.

MR. ANDERSON: What is that?

THE WITNESS: It did not make a report.

MR. ANDERSON: It did not make a report?

MR. KRESEL: It made no report at all.

MR. ANDERSON: I move to strike out any of the evidence of the witness on this subject, and to preserve the record and state my position I think the following is the sound position on that point: The Resolution of Congress or the Senate is an official document of which the Court will take judicial notice in any event, and therefore it is not material whether it is put in evidence or not. But as to any matter with relation to the action of the Committee, in the first place it is not competent for this witness to testify with respect thereto; in the second place, it is not evidence before this Court. If the Court desires to examine the record of that Committee it will find it proceeded as a sub-committee without counsel, making its own investigation, and therefore if it has any bearing on this situation at all it would be for the purpose of giving to this Court the benefit of its conclusions, if it had reached any, or the benefit of the failure to reach the conclusions on an issue now tried before this Court. Therefore it would not be competent evidence and it would not be competent to put into evidence and utterly immaterial and irrelevant to the trial here, because this Court must determine these issues for itself upon the pleadings in this case.

I think that it is proper that I should make that reservation to that question, although I conceive, of course, that for certain purposes recognized by all lawyers in the Courts, the evidence before the Committee can be used.

MR. KRESEL: Is there a question pending? I thought it had been answered.

THE COURT: I suppose it is rather a motion to strike out the answer of this witness.

MR. ANDERSON: I think I did make the motion, sir.

THE COURT: Do you desire to be heard on the motion?

MR. KRESEL: No, your Honor; I think it is a perfectly proper inquiry. If there had been a report made, of course the report would have to be produced. But the question that I put to the witness was whether he knew that any report had been made or no. He said that he did not know and I asked him whether any report was made and he said no. There is no better evidence than that. Even assuming that there had been a collateral matter of this sort, we would not be bound by the rule as to the best evidence.

THE COURT: You press your motion, I assume, because the negative answer of the witness is prejudicial. It seems to me that ends the matter. Had it been in the affirmative, it would have ended the matter so far as this witness is concerned, because then there would have been evidence of the nature of that report which it seems to me possibly would be relevant or advisory or persuasive, in the same way that an opinion of a Court elsewhere would be helpful, or the action of either of the other departments of the Government with respect to a particular matter, although not at all controlling; no more than the decision of a Court in another Circuit would be controlling in the District of Delaware. We take into consideration the views of other Courts on a particular matter.

But, there is no such report here, so I do not see that it is material whether the answer remains or goes out.

MR. ANDERSON: Will your Honor permit me to make the suggestion, as this matter may come up subsequently and we might as well dispose of it?

I submit, with deference, that there is a very wide difference between the decision of a Court, where counsel appear on both sides and argue questions of law and fact and the Court reaches a conclusion, even though it be not binding upon another Court of another jurisdiction, and a hearing before a sub-committee of the Senate, where there are no counsel present, where the proceeding is conductd in the informal way so commonly known, with arguments and hearsay and everything else that can be thrown into a record of that kind. It not only is not evidence of any fact, but their finding would not have any effect whatever upon any Court under such circumstances, not even as persuasive authority. It could not be used in any Court—a hearing conducted in that way.

An adjudication of a Court upon a matter before it on the pleadings is *res adjudicata* as to the parties. A hearing before the sub-committee does not affect anybody's rights. Anybody concerned can go right on and litigate their rights contrary to the conclusions of that committee without being affected in the slightest by its conclusions.

THE COURT: No doubt about it.

MR. ANDERSON: It is merely a matter of information for Congress for the purpose of fixing a general policy but has no effect whatever in a Court of justice and we respectfully submit it cannot be considered by a Court of justice as having any bearing on its conclusions. Therefore, it is irrelevant and immaterial and it is improper to bring before a Court, since it cannot be intended

to have any other effect than to affect the judgment of the Court; and it should not, I respectfully submit, have the slightest effect upon the judgment of the Court.

MR. KRESEL: I am about to introduce reports of the Committees on the other two investigations and I shall be glad at that time, when I offer those, to argue the question as to whether they are material.

So far as this present question is concerned, there was no report, so there is nothing really to be said about it.

THE COURT: It is a moot question now and I shall therefore grant the motion of the plaintiff to strike out the answer.

Q. 461. Mr. Garvan, as to the proceeding before the Committee on Finance of the United States Senate, what was pending before that Committee?

A. The Tariff Bill.

MR. ANDERSON: The best evidence of what was pending before the Committee is the record itself, is it not? It was not only tariff but embargo, as I understand it.

MR. KRESEL: I offer in evidence the proposed Act which the Committee had before it, known as H. R. 8078, 66th Congress, First Session, which is printed at pages 3 to 6 in the volume entitled "Hearings Before the Committee on Finance of the United States Senate."

THE COURT: What was the time?

MR. KRESEL: The hearings before the Committee were in December, 1919, and January, 1920. The exact dates were December 8th, 9th, 10 and 11th.

THE COURT: That gives me all I want.

MR. ANDERSON: That is subject to the general and specific objections and the special objections

which I have just indicated to evidence of this character.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 128." (*See Exhibits, Vol. V, page 2709.*)

MR. KRESEL: I now offer in evidence the report from the Committee on Ways and Means of the House of Representatives made by Congressman Longworth upon this Bill, an official publication.

MR. ANDERSON: Subject to the same objection.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 129." (*See Exhibits, Vol. V, page 2717.*)

MR. KRESEL: I am going to ask your Honor's indulgence while I read a portion of this report. (Reading).

MR. ANDERSON: May I ask counsel if that report is offered as evidence of the facts therein contained?

MR. KRESEL: Yes, sir. It is offered as evidence of the contents therein contained.

MR. ANDERSON: Then I wish to add the further objection to the general and specific objections already made, that a report of a Committee or sub-committee of Congress is not evidence in the Courts of any facts contained in that report. Even the statement of a Court in a judicial proceeding is not evidence of the facts contained therein unless the printed record upon which the Court was acting is produced and introduced in evidence.

The Committee of Congress, for whom I have the greatest respect, of course, and of whom I wish to speak with the greatest deference, are quasi-

political bodies and they are largely influenced by considerations which cannot come into a court-room at all; and therefore, what may be the views of a majority report of a Committee dealing with an economic question, what it may believe to be the facts in its arguments, is certainly not a proper subject for consideration by the Court and is not evidence of the facts stated in the report.

I therefore want to make a motion to strike out that report. I might add that it differs from the reports made by requirement of law by officials of the Government to either the President or Congress.

MR. KRESEL: There is no such distinction as Colonel Anderson has just intimated. At the proper time, when your Honor comes to consider this question for a final ruling, I shall be glad to call to your Honor's attention the authorities upon the subject. For the time being it is simply necessary for me to say to your Honor that there is no distinction drawn by the authorities as to the efficacy of a report made by a Committee of Congress or Congress itself and a report made by a Bureau or Department of the Government, either pursuant to a request of the Congress or pursuant to a general statute requiring the making of annual reports.

Your Honor will recall that Colonel Anderson offered a portion of a Federal Trade Comimssion report and read therefrom, and stated at the time that he was contending that whatever was contained in an official report such as he was reading from was proof of the facts therein contained. If there is any question about what Colonel Anderson said, I have the record here and I will read it.

MR. ANDERSON: I admit that you have stated correctly what I said.

MR. KRESEL: Very well. Now then, here is a report from a committee of Congress that had charge of this Bill, that made an investigation of the subject that was under discussion and about to be treated in legislation, and having made such an investigation, they make a report to Congress and state what their conclusions were and what the conclusions were based on. We say that that is evidence of the facts, by which the Government is bound, bound in any suit, bound in this suit, and we are offering this not only to show that such a report was made, but offering to show that those were the facts that were found by Congress and that they were facts.

We have heard here in argument and in opening statement of the sanctity and inviolability of acts of Congress. The Government can not, on the one hand, claim that Congress is supreme and that even by the act of March, 1918, it did not give to the President power to dispose of this property, and on the other hand claim that the action of Congress upon cognate matters is not to be considered by the Court. I do not think that that is a consistent position for the Government to take. We offer this as proof of the facts contained in the report.

MR. ANDERSON: Just a word in reply, sir. In the first place, this is not an act of Congress. If it were, it would not have to be offered in evidence.

MR. KRESEL: Pardon me; may I add another statement?

MR. ANDERSON: Yes.

MR. KRESEL: We offer it also, if your Honor please, as proof of the fact and our contention

that when the Alien Property Custodian and the President did with this property was not an arbitrary disposition thereof, as is charged, and to show what Congress by this legislation, affecting the same industry, did for the protection of the industry. It goes directly to bear out the defense that we urge, that not only had the President the power under the Act to dispose of the property in the way he did, but that the purpose of the disposition of the property was in consonance with the Act of Congress, and upon that ground we say it is material and relevant.

MR. ANDERSON: *Ex post facto* laws are not favored in any event, and are forbidden in many instances; but it would be a most remarkable situation if the acts of the Alien Property Custodian in selling this property in March or April, 1919, could be affected by a report of a Committee of Congress made in December, 1919, the act of sale having taken place under an act passed in March, 1918, or nearly two years prior thereto, and the act itself having taken place at least six or eight months prior to the consideration of this matter by the House of Representatives at all. So that on the last point it seems to me that counsel are taking a position which is a little far-fetched.

As to the introduction of this evidence and the other matters, to come up, we might just as well state our positions fully. In addition to what I have said, which I shall not repeat, the position of the Government has been that an official report, made as required by law or to a superior officer, which I have outlined in full, is evidence of facts prima facie. But the committees of Congress do not come within that scope.

In the second place, an act of Congress is, of course, to be considered by the courts for whatever bearing it may have, because that does not have

to be introduced in evidence. That is the law of the land. But a report of a committee occupies a different position for so many reasons that I would be trespassing upon your Honor's time and somewhat reflecting upon the knowledge of the Court even to undertake to detail these reasons.

Now, in this particular case, as the record discloses, and I presume counsel will show, the Committee on Ways and Means, or a majority thereof (I do not remember which) made a report, part of which has been read to the Court. The House of Representatives, as I now recall, and I am subject to correction if I do not state it accurately, did pass a bill, with what amendments I do not recall, with what modifications from the report I do not recall; but as I understand, it was a bill, a part of the Tariff Act, which imposed an embargo or licensing system as to dyes for a limited period.

That went over to the Senate and the Senate refused to pass that bill, and therefore it never became a law; but to the contrary, the Congress of the United States, as represented in the Senate and the House of Representatives, expressly declared that they did not favor the policy outlined in that bill, and did not accept, so far as their action has been given any force, these statements or reasons upon which that action was predicated in the House as a basis for their action.

In those circumstances to ask a Court of Justice to accept as proof of facts the statements of a chairman of a committee, however distinguished, in advocacy of a proposition for which he may be quite enthusiastic, would be, it seems to me, going a little far in the administration of justice.

If the facts are relevant here, they can be proved by primary evidence, and the Court cer-

tainly cannot try this case upon the views expressed by Mr. Longworth or anyone else, or his committee, either as to the facts or the reasons. If it could, it would certainly greatly simplify the introduction of evidence in litigation which might be affected by such proceedings in Congress, but would certainly greatly confuse the results to be arrived at. And that is particularly true unless it be shown that those views and facts were adopted by the Congress and moulded into law, in which event the facts presented by the committee are no longer material or relevant, but merely the action of Congress as speaking for the views of Congress in their final form.

Whether this report was ever considered, whether it was ever adopted, whether it ever even became a part of the Bill of the House of Representatives, is a question that does not appear. For that reason, your Honor, I submit that all this matter is clearly incompetent, immaterial and irrelevant and should not be put into this record.

MR. KRESEL: Colonel Anderson is misinformed as to the final action upon this report and the bill to which it relates. My information is, and if necessary we will introduce the legislation, that the bill to which the report related was passed by the House, that the bill went to the Senate and never came to a vote in the Senate. That is the situation about it.

As to the effect of the final result as to whether the legislation was or was not passed, it seems to me that is absolutely immaterial, because if it be true that a report made by a department is proof of the facts, it does not always follow that the report is adopted or that the recommendations therein contained are acted upon. By what method of reasoning is it claimed that

simply because the report of this committee was not approved, assuming that it was not, and I say that it was, that therefore it cannot be admitted with the same effect as a report of an underling in some official capacity in an administrative department, as to which the Government admits it is proof of the facts therein contained?

I propose, after this report, to show your Honor the report of the Senate Committee that had this bill in charge, upon the same subject, and I think we have a right to show.

MR. ANDERSON: You admit that that is all hearsay, Mr. Kresel?

MR. KRESEL: Not at all, and the question of hearsay does not enter into it.

THE COURT: It will be received as indicating the action of the sub-committee of the House of Representatives upon a hearing had. As to whether it has any value as evidence is a matter that we have been reserving with respect to all matters and will be reserved here; I can well see how there might be a difference between counsel as to the relevancy of the dye and chemical situation and condition in America, both with respect to dyes as such and with respect to the military effect and value of the by-products; but I fail to see how there can be any difference or where there should be a dispute with respect to a fact which ought to be as well-known to the Government as to anybody else.

I do not pretend to say at this stage of the case what those facts are or were, but I do say that this case should not have to be drawn out day after day and week after week for the purpose of ascertaining what should be a matter that could be agreed upon by counsel *in toto* or specific differences pointed out, not with a view of coun-

sel saying that such testimony is or is not relevant, but if found relevant eventually under our general rule, that this case may not needlessly be prolonged for determining facts which undoubtedly the Government has been in possession of for a great many years.

The motion to strike is denied. You may proceed.

MR. KRESEL: I now offer in evidence the report made by Senator Watson, from the Committee on Finance, on the Bill described as H. R. 8078, this report being made to the Senate of the United States February 13, 1920.

MR. ANDERSON: That is subject to the same objections, if your Honor please.

THE COURT: Yes.

Received in evidence and marked "Defendant's Exhibit No. 130." (*See Exhibits, Vol. V, page 2726.*)

MR. KRESEL: I read from the report.

THE COURT: Is this on the same Bill

MR. KRESEL: The same Bill, your Honor.

THE COURT: Report of the Senate Committee?

MR. KRESEL: Report of the Senate Committee, made by Senator Watson as Chairman of this Committee. (Reads from exhibit.) I skip a portion of this giving a lot of figures relating to production. (Continues reading.)

Your Honor, I have not read the full report. I do not think it is necessary for me to read more than I have.

MR. ANDERSON: If your Honor please, in order to make the record clear, I simply wish to make a motion to strike out this report in so far as it is introduced as evidence or proof of the facts stated therein. In that connection, your Honor

made a statement which I probably did not quite catch the import of; that is, that counsel should agree on certain facts in this case of which the Government obviously had knowledge.

I do not assume, of course, that the Court intended any criticism of counsel for the Government in that regard, but in the first place, your Honor will recall that we made a motion to strike out that portion of the answer upon which this evidence was based and asked for an argument of that motion in advance of the trial. The defendant made a motion to dismiss this Bill and did not set the motion down for hearing on account of the absence of counsel in Europe and illness in the family of one other counsel. We could not set it down for a hearing until the time we moved to set it down, some three or four weeks in advance of the trial, and asked that it be set down in advance of the trial so that the questions of law might be resolved in this case and that we might have some guide in putting in this evidence.

Four-fifths of the evidence that has been produced here as matter of record to my view is as immaterial as a work on astronomy in this case, and therefore the Government is simply objecting. But there is no way we can agree with counsel, because we had no possible idea of the limits to which this case was going to go. I do not say that in any sense meaning that aftersight is better than foresight, but as I urged on the Court at that time, and as the record will show, and urge now, this case is purely a question of law, it can be decided upon the allegations of the Bill as admitted by the Answer on several of its most material questions, which we think are conclusive. We are taking this evidence as best we know how

and presenting it as best we know how under such rules as the Court has laid down.

I am quite frank to say in that regard we have had under the rule which has been followed, to which I have no objection whatever, to go further than under ordinary conditions we would go. But I assumed the Court desired all the facts presented to the end that this matter be decided once and for all.

If there was suggested in your Honor's statement any criticism of counsel for the Government, I wish to make the statement that in my humble judgment at the time and from which I have never changed in any regard, the argument of the preliminary motions in this case would have cut this trial to about one week. It was objected to by counsel of the other side and the Court overruled our motion to set those matters down for hearing.

MR. KRESEL: Will your Honor hear me?

THE COURT: Yes, but I desire to state now that there was no application for a preliminary hearing of any of these motions until after the case had been set for trial on the merits; and in order that there should not be a delay in the trial of this case, the preliminary questions raised by the motion then brought forward were deferred so that if this case was to be tried, it would be tried now and not later.

I will hear you, Mr. Kresel.

MR. KRESEL: I was going to speak on the same point, your Honor. This Bill was filed in September, 1922. Our Answer was promptly filed in October 1922. If the Government desired to argue a motion to strike our Answer or any portion thereof, they had six months before this trial commenced within which to do it. I say six months

even before we took the first testimony of Dr. Holdermann; and it was not until two or three weeks before the trial actually commenced that the Government gave notice of this motion to strike any portion of our Answer. That is as to the first point.

I understand your Honor's statement with reference to counsel agreeing to apply particularly to the question of the control that the Germans had of the dye industry of the United States before the war. That is a matter that is well known. That is a matter that the Government might well have agreed with us upon and not have put up to the proof, so that we have had to spend days and days to do it. And even now, when I offer a report of a Committee of Congress that finds those facts, they object to it when they know well that it is the fact and always has been the fact, recognized by the Government in publications; the Tariff Commission says it; Congress has said it; and yet we have counsel for the Government here trying to keep out the truth about it.

MR. ANDERSON: Now, if your Honor please, as to the somewhat remarkable statement of counsel, I did not want to get into a controversy with counsel in this case and I have tried to avoid it and I am going to avoid it as far as I can. But counsel has criticized our conduct of this case a number of times. I have not criticized the conduct of counsel. I do not believe that that is within our province. Each side must conduct the case under the regulations prescribed by the Court as it sees fit. I have not said a word in criticism of counsel at any time in the conduct of this case and I do not desire counsel to criticize our conduct of this case.

So far as this Court is concerned, the Court

has a right to tell us how it thinks the case should be conducted and to guide us and direct us in its conduct, within the rules of practice prescribed by law. But so far as counsel are concerned, I do not recognize their right to criticize the conduct of this case by the Government, nor am I going, with all deference to your Honor and to the extent that your Honor requires, to submit to their criticism of our conduct of the case. I am tired of that kind of thing.

In the second place, there has never been a suggestion of an agreed state of facts in this case. There has never been any request that we agree upon a state of facts in this case. We ourselves suggested a stipulation and went as far as we could go in the stipulation, but it was not signed until after we got to Wilmington to try this case.

In so far as the facts are concerned, I have no objection to the proof of facts in this case and have stated upon the record time and again, if it was demonstrated to be a fact, I will admit it to save the trouble of proving it. But when it is undertaken to be proved by what I consider to be illegal evidence and arguments, it is not only my right but my duty to object and to put my objections upon the record; and with the consent of this Court and the leave of this Court, I propose to continue to object where I think the evidence is illegal.

As far as a stipulation or agreement of facts as to the control of the dye industry by the Germans in this country prior to the war, the evidence has been cumulative upon cumulative here as to matters going back to 1858. We have objected to that evidence but we have not controverted a particle of it and we do not propose to.

As far as that is concerned, I stated in my opening statement, and I repeat now, that the conduct by the Germans prior to this war has absolutely nothing to do with this case, in my view; but of course, if counsel want to put in that evidence under the leave of the Court, subject to my objection as to its materiality, relevancy, and the other objections stated, then it can go on in. But counsel must conduct his case his way, and I will not complain, and I will undertake with the aid of my associates and the leave of this Court to conduct the Government's case as I think it ought to be conducted.

THE COURT: There is no objection to your doing that and making such objections as you see fit and proper. It did seem to me and still seems to me that the status of the chemical and dye industry in this country at the time of the passage of the Trading with the Enemy Act and the amendments thereto would be a fact that would be clearly within the knowledge of the Government.

My purpose is not now to indicate that such matters are material or relevant in any way. I do not know whether they are or not. I will determine that in the final determination of the cause, if necessary. But it did seem to me that unless those facts were actually in dispute, an agreement could have been reached. I can understand counsel not being willing to agree where the clients are other than the Government of the United States itself and the defendant, that have not the interest in public welfare or the experience in litigation that this defendant has. I fail to see, unless the facts are in dispute, the reason for taking day after day in producing them. I do not

know that that is criticism. If it is, it is. If it isn't, it isn't. You may proceed.

By Mr. Kresel:

Q. 462. Mr. Garvan, what day was it that you say you resigned as Alien Property Custodian?

A. March 11th or 12th.

Q. 463. What year?

A. Nineteen hundred and twenty-one.

Q. 464. Subsequent to that date, did you have any conference with Colonel Thomas W. Miller, your successor in that office?

A. I did.

Q. 465. Can you fix about the time?

A. I should say within two weeks or three weeks after I got out. Just about that time I went to Charleston for a few days' rest and then when I came back, I saw him.

Q. 466. And where did you talk to Colonel Miller?

A. In his office.

Q. 467. In Washington?

A. Yes.

Q. 468. Who was present?

A. I have no recollection of anyone being present but himself and myself.

Q. 469. Will you please state the conversation?

A. I called and told him that my children were in school in Washington and I therefore could not leave Washington until the schools were out; and that I would have a good deal of time and I would be perfectly willing and glad to place any experience that I had had in the office at his disposal during the time that I was in Washington.

I then spoke of The Chemical Foundation. I told him that it was a Government-created institution, that I was tired and did not think it was fair that I should be asked, being out, to go on with the thing.

Q. 470. To go on with what?

A. To go on with carrying on The Chemical Foundation; that its main usefulness was in conjunction with all departments of the Government and in assisting all the other necessities for the protection of the organic chemical industry.

I told him that there would be legislation in Congress, work to do with the Army and Navy, with the Bureau of Education, with the Department of the Interior and the Bureau of Standards, and that it was only if the whole power of the Government was brought together to bear upon the question of education in the colleges and the schools and in the industries, etc., that anything could be accomplished.

I explained to him that it was not as a dye industry that we were interested in it. It was only because the dye industry was the post-graduate school of organic chemistry. I told him that there was no politics in it, that both Republicans and Democrats throughout the war had worked shoulder to shoulder. I told him that the Republican Ways and Means Committee had favorably reported on protecting the industry and had passed a temporary embargo and that the Finance Committee of the Senate and Mr. Longworth of the House and Senator Knox of the Senate had been our stalwart friends and that the only people who seemed to be against the industry were people whose motives would not bear the full light of day.

I asked him to become a director and asked him if, after six or eight months, when he had studied the subject, he would not then take over the burden from me and continue it as I had continued it while I was Alien Property Custodian.

I gave him all our literature and then I saw him again in New York at the Bar Association.

Q. 471. What did Colonel Miller say?

A. Colonel Miller agreed to become a director.

My impression is that he agreed to become president. I am not positive as to that. But he agreed to become a director and said he would study and look into the matter and let me know later as to how it developed. That was left to await developments and his getting more facts about it.

Q. 472. Was he actually elected a director?

A. He was.

Q. 473. Subsequently did you have another conversation with him with respect to this subject?

A. I did.

Q. 474. Will you state the time when, who was present and what was said?

A. Well, that was at the Bar Association.

Q. 475. In New York City you mean?

A. Yes. Mr. Corbett was present also at that conversation and that was along the same lines. I do not know whether that was before he was a director or not, but I know we had gathered together all our literature and we gave him everything. The conversation was along the same general lines. I cannot tell whether that was before he was a director or afterwards.

Q. 476. What literature was it that you say you gave him?

A. Our prospectus, that yellow book which we published.

Q. 477. Is this the book, a copy of that?

A. Yes, that is the book.

MR. KRESEL: Please mark this for identification.

Marked "Defendant's Exhibit O for Identification 7/3/23."

Q. 478. What else do you recall that you gave him?

A. I could not tell what else; whatever we had gotten out prior to that date. I could not tell you.

Q. 479. You cannot identify any more than that now?

A. No.

Q. 480. When was it that Colonel Miller informed you that he could not serve?

A. I could not tell.

Q. 481. How long after this talk?

A. I could not tell you how long after it was. I know we put his name on the door and it was some time after.

Q. 482. What door?

A. On the door of The Chemical Foundation. I think he notified us by letter.

Q. 483. About what?

A. About his resignation, that he could not serve. I may be mistaken.

Q. 484. I want to ask you, Mr. Garvan, whether any of the patents that were assigned by the Alien Property Custodian to the Chemical Foundation were so assigned at the request of any department of the Government?

A. Yes, sir.

Q. 485. Will you please now state what patents assigned by the Alien Property Custodian to the Chemical Foundation were assigned at the request of any department of the Government, stating what department, what official of the department, describing the patents, what consideration was paid, and all about it?

MR. ANDERSON: Is it in writing?

MR. KRESEL: Yes, I have some writing I will put in.

MR. ANDERSON: I would like to have it. If you are going into the assignments and the request for them, I think the writing is the best evidence of what took place.

MR. KRESEL: I will call attention to it. The assignments are already in evidence.

THE COURT: Do you mean what patents were assigned to the defendant at the request of various departments?

MR. KRESEL: That is right.

THE COURT: Are those requests in writing?

MR. KRESEL: No; there is some correspondence, but very little, which I will put in. The requests were not in writing.

Q. 486. Mr. Garvan, I direct your attention first, in connection with this question that I have put to you, to the assignment attached to the Bill of Complaint and marked Exhibit H-3, which you will find at page 423 of the Bill. (Handing witness book.)

MR. KRESEL: That has been put in evidence, and it is Plaintiff's Exhibit No. 118.

Q. 486. (Continued.) Please state how that assignment to the Chemical Foundation came to be made.

A. That was made at the request of the Navy. Those gyroscopes are for use on battleships and all ships, particularly for their compasses, and Captain Norton or Commander Norton, I am not sure of his rank at that time, came to me and asked to have those assigned to the Foundation and had the Foundation then issue them a license.

Q. 487. How many of those patents are there?

A. Some fourteen, I think. Yes, fourteen.

Q. 488. How much did the Chemical Foundation pay to the Alien Property Custodian for that assignment?

A. $500.

Q. 489. Did the Chemical Foundation take this assignment and thereafter issue a license to the Government?

A. It did.

THE COURT: Your license, I suppose, is in evidence.

MR. KRESEL: The license is in evidence, your Honor. That is the big license of November——

THE COURT: Oh, the license was subsequent to this assignment, I see.

MR. KRESEL: Subsequent to this assignment, of course.

Q. 490. While we are on that, Mr. Garvan, will you state whether the Government paid anything to the Chemical Foundation for this license?

A. It did not.

Q. 491. Now I direct your attention to an assignment which is marked Exhibit H-13 attached to the Bill of Complaint, at page 447, being Plaintiff's Exhibit No. 128, and ask you to state the circumstances as to those 160 patents that are covered by that assignment.

MR. ANDERSON: I wish to note an objection, first that the question is too general and indefinite, second that the circumstances under which the assignments were made cannot affect the rights of the parties under the assignment, which is in writing and speaks for itself and merges all the conditions precedent in it.

THE COURT: The question of good faith is involved, I take it, and I will admit the circumstances under which it was made.

MR. ANDERSON: Then I would ask, if your Honor please, reserving my objection, that the witness state specifically who had these negotiations with them, when, what was his position, what was said, and not the general circumstances.

THE COURT: Including the time, place, persons present, the names of the persons making the request, and their official connection with the Government. The objection with respect to the generality of the question I will need to have the

question read in order to determine. (Q. 491 read as recorded.)

If the witness goes afield, you may stop him. You may take the answer.

A. A short time prior to the fifteenth day of May, 1920, the Navy requested me to assign——

MR. ANDERSON: I object, sir.

A. (Continued.) ——or, Captain Norton representing the Navy. Captain Norton was the man who always represented the Navy with us in these assignments, and he came to me and asked me to assign those to the Chemical Foundation.

By MR. ANDERSON:

Q. 492. What was Captain Norton?

A. He was a Commander. I think he had charge of the Patent Division of the Navy. At any rate, he represented the Navy in its dealings on patents with the Alien Property Custodian.

Q. 493. He is dead now, is he not?

A. I was so informed.

MR. KRESEL: Well, we did not kill him, you know.

MR. ANDERSON: I did not suggest that you did.

MR. KRESEL: I do not see the reason for making such a remark.

MR. ANDERSON: I asked if he was dead as bearing upon the admissibility of his evidence. I did not suggest you killed him.

THE COURT: You may proceed.

By MR. KRESEL:

Q. 494. Go on, Mr. Garvan?

A. Those 160 were then assigned as contained in the assignment.

Q. 495. How much did the Chemical Foundation pay the Government for that assignment?

MR. ANDERSON: I object to this preliminary evidence now on the ground that the agent who conducted the transaction is dead.

THE COURT: I think the objection is not well taken. Have you any authority to support that objection, Colonel Anderson?

MR. ANDERSON: No, sir.

THE COURT: The objection is overruled and the answer will be taken.

Q. 495. (Continued.) Will you give the answer?

A. $5,000.

Q. 496. And did the Foundation thereafter give to the Navy Department of the Government a free license on these patents?

MR. ANDERSON: I object on the ground that the question of what is in a license is a question of the construction of a written instrument, and that the only evidence of that is the instrument itself.

MR. KRESEL: And it is in evidence.

MR. ANDERSON: I object to the construction of it.

THE COURT: The objection is sustained.

MR. KRESEL: The instrument will speak for itself, your Honor.

Q. 497. How much, if anything, has the Chemical Foundation received as income on these 160 patents which you have testified were taken over at the request of the Navy Department and for which the Foundation paid the Government $5,000?

A. $100.

Q. 498. I direct your attention to assignment which is marked Exhibit H-19, Plaintiff's Exhibit No. 134, page 467 of the Bill, and ask you to state whether you had any talk with Commander Norton of the Navy Department with reference to that assignment?

A. Yes, sir, to the best of my recollection.

Q. 499. And what was the conversation, giving as near as you can recall, the date when?

A. Some time shortly prior to the nineteenth day of February, 1921, when he again came to me and told me that they had discovered further patents that they would like to have transferred to the Foundation, so that the Government could get a license from them.

Q. 500. And how much did the Chemical Foundation pay the Government for that assignment?

MR. ANDERSON: I do not suppose that you mean to ask how much you paid the Government; how much you paid the Alien Property Custodian, I presume.

Q. 500. (Continued.) All right; paid the Alien Property Custodian.

MR. KRESEL: I will accept that correction.

A. $5,000.

Q. 501. And how much, if anything, has the Chemical Foundation collected as income on any of the patents covered by this assignment of February 19, 1921?

A. One license fee of $100.

MR. KRESEL: I now offer in evidence Article 167 of the Income Tax Regulations, and this time I produce the official print entitled "Treasury Department, United States Internal Revenue, Regulations 62, 1922 Edition, relating to the Income Tax and War Profits and Excess Profits, Taxes," and so on. I ask to read in Article 167, which appears at page 77 of this publication. I read as follows. It is entitled "Depreciation of patent or copyright."

"In computing a depreciation allowance in the case of a patent or copyright, the capital sum to be replaced is the cost (not already deducted as current expense) of the patent or copyright or its fair market value as of March 1, 1913, if acquired prior thereto. The allowance should be

computed by an apportionment of the cost of the patent or copyright or of its fair market value as of March 1, 1913, over the life of the patent or copyright since its grant or since its acquisition by the taxpayer or since March 1, 1913, as the case may be. If the patent or copyright was acquired from the Government, its cost consists of the various Government fees, cost of drawings, experimental models, attorneys' fees, etc., actually paid."

MR. ANDERSON: I have not seen that paper before being read, and I wish to make a formal motion to strike out on the ground that it is in no way binding upon this Court and is not evidence in this Court. The question of arriving at the value of patents in this case is a question solely for this Court.

THE COURT: It may be taken under our general rule.

MR. KRESEL: I offer in evidence a letter from the Alien Property Custodian, January 14, 1921, directed to the Navy Department, attention of Commander A. L. Norton.

Received in evidence and marked "Defendant's Exhibit No. 131." (*See Exhibits, Vol. V, page 2734.*)

MR. KRESEL: I offer in evidence a letter from the Navy Department, signed by Charles B. McVay, Jr., Rear-Admiral, United States Navy, to the Chemical Foundation, dated January 19, 1921.

Received in evidence and marked "Defendant's Exhibit No. 132." (*See Exhibits, Vol. V, page 2735.*)

MR. KRESEL: I offer in evidence a letter dated January 20, 1921, from the Chemical Foundation to Rear Admiral Charles B. McVay, Jr., of the Navy Department.

Received in evidence and marked "Defend-

ant's Exhibit No. 133." (*See Exhibits, Vol. V, page 2736.*)

THE COURT: Is that all of that group?

MR. KRESEL: All of this group.

THE COURT: They are admitted.

MR. KRESEL: I shall not stop to read these three letters, your Honor. They all refer to one of these assignments that Mr. Garvan has testified about, to wit, the 160 patents, and the Navy requests that the Chemical Foundation grant a license, and the Chemical Foundation says it would do so.

I now offer in evidence with reference to the gyroscope patents, those fourteen that the witness has testified followed, a letter from Josephus Daniels, Secretary of the Navy, to the Chemical Foundation, dated December 4, 1919.

Received in evidence and marked "Defendant's Exhibit No. 134." (*See Exhibits, Vol. V, page 2736.*)

MR. KRESEL: I desire to read that letter. It is short, your Honor. (Reads letter.)

I now offer in evidence the answer to this letter by the Chemical Foundation, dated December 8, 1919.

Received in evidence and marked "Defendant's Exhibit No. 135." (*See Exhibits, Vol. V, page 2737.*)

MR. KRESEL: I now offer in evidence the following additional correspondence with reference to the same subject, to wit.: Letter from Charles B. McVay, Jr., Bureau of Ordnance, Chief of that Bureau, of the Navy Department, to the Chemical Foundation, dated July 2nd, 1920; letter from the Chemical Foundation to the Navy Department, dated July 9, 1920; letter from Charles B. McVay, Jr., Rear Admiral of the United States

Navy, to The Chemical Foundation, dated July 15th, 1920; and letter from The Chemical Foundation to the Navy Department, dated July 19th, 1920.

THE COURT: Each is admitted.

Received in evidence and marked respectively, "Defendant's Exhibits Nos. 136, 137, 138 and 139." (*See Exhibits, Vol. V, pages 2738, 2740, 2741, 2742.*)

MR. KRESEL: I desire to read, if your Honor please, certain portions of testimony by Mr. Garvan before the Committees of Congress in connection with certain portions that have been read in by Colonel Anderson.

MR. ANDERSON: To which I wish to note an objection, if the Court please, on the ground that the admission of statements formerly made by a witness who is an officer of or represents a corporation, or himself is a party, are admissible without calling the witness, as admissions against his position in this case. Not necessarily admissions against interest when made, but admissions against his position in this case, as taken under the pleadings.

I do not know of any rule of law or evidence, though my knowledge is limited, that permits the reading into the record of evidence of a party, of an officer of a corporation which is a party or representative of a party, made on a former occasion, as testimony in this case. The witness is on the witness stand and he can testify to anything he pleases—that is anything he knows.

THE COURT: Mr. Kresel, what is the purpose of it?

MR. KRESEL: The purpose is, your Honor, to show that the disconnected portion of testimony read in by Colonel Anderson, made by Mr. Garvan—and I say that without criticism of the

Colonel—even going to the extent of reading a portion of a paragraph and not the entire paragraph, is not a full and a fair reflection of the statement of the witness. I am offering this under the familiar rule that where one party to a proceeding offers in evidence a portion of an instrument or a portion of a proceeding, the other party has the right to offer the balance of it. I do not propose to read Mr. Garvan's whole testimony, I propose to read only such portions as are relevant to the matter that was read in by Colonel Anderson.

THE COURT: If your purpose is to use the testimony given by this witness before the Congressional Committee as primary evidence in this case, there is no doubt in my mind at the moment but what Colonel Anderson's objection is well taken. The purpose of my inquiry was to ascertain whether that was your purpose or whether it was your purpose to negative the effect of a partial reading of that testimony; that is, whether it is your contention the paragraphs, portions or sentences which you now intend to read are in negation or modification of that which was read by the Government.

MR. KRESEL: The latter is my purpose, your Honor.

THE COURT: Objection overruled.

We will take a recess until 1 o'clock Standard Time.

AFTER RECESS.

MR. KRESEL: I read from page 244 of the Hearings before the Committee on Ways and Means; Question by Mr. Moore:

"MR. MOORE: Having put these things in the record, I thought you probably would care to make

a statement, because you are familiar with what has been said and done. If you care to make a statement, I will not interrupt you

"MR. GARVAN: I thought Mr. Choate had covered our purpose very well; but I can, in addition, just state this:

"The foundation of the Chemical Foundation was an effort to form an organization to represent as nearly as posible at that time the public interests. Judge Ingraham, of New York, and Judge Gray, of Delaware, had charge of drawing our charter and our trust agreement, and our certificate of incorporation. We have endeavored to make it as nearly a public institution as our laws allow, and at the same time have it an official organization. We wanted to sell these patents to the Government, and if there had been any method by which we could make them a working force, and still have them owned and controlled by the Government, it would have relieved us from a great deal of responsibility, and if there is at this time, any suggestion for modification or amendment of our plan which will insure in the minds of the committee a more definite and certain fulfillment of the intention and purpose of our organization, I am certain that the Chemical Foundation and all its stockholders and all who are interested in it, would be glad to conform to the wishes of the committee, because, in so far as we have the public recognition and public support, and Government recognition and Government support, we become more efficient and become more able to cary out the intentions which are in our hearts and minds."

Question by Mr. Kitchin. It will be conceded that was Congressman Kitchin?

MR. ANDERSON: Yes.

MR. KRESEL: (Reading.)

"MR. KITCHIN: Suppose that the Government would think it wise to take over the Chemical Foundation and operate it; would your officers be willing to turn it over to the Government?

"MR. GARVAN: Provided anyone could draw a bill which promised in the opinion of this committee efficiency in carrying out the purposes of the organization, we will be very glad to do so. For a month or six weeks, Mr. Palmer and myself and Mr. Bradley Palmer and others sought in every way possible to find some way by which we could turn the idea over to the Government and make it efficient in the use and protection of the patents.

"MR. GREEN:" ——

MR. KRESEL: That is another Congressman.

MR. ANDERSON: Yes.

MR. KRESEL: "MR. GREEN: What do you mean by 'efficiency' in that connection?

"MR. GARVAN: I will explain that. The employees of the Agricultural Department, for instance, invent a number of processes every year. By the rules of the Department of Agriculture they are compelled to dedicate them to the public. The result is throwing them into the waste basket because an invention when it is first patented has not been developed to the point of commercial manufacture. Nobody is going to do that if it is owned by the Government."

I read from page 360 of the same proceedings:

"MR. GARVAN: I will agree to do this: If there is question about it I will agree to have the charter amended, and in the terms and under the suggestion which you may dictate, in any way which you think will safeguard that. We must, of course, do two or three things; we must consider cases of the patents like salvarsan, and we must consider cases where one has invested, say, on the

strength of his patents, two or three million dollars, and some man applies whose character shows his application to be nothing but an attempt to blackmail a man to buy him out, but if you can draw any proposition which will safeguard your contention, I promise you that within forty-eight hours the charter will be amended to contain your proposition. I would not have it thought for one moment that there is any intention on the part of those trustees or those officers ever to put themselves in a position where they could be seeking or attempting to use any arbitrary power. I can do no more."

Q. 502. Mr. Garvan, I direct your attention to a statement read in by Colonel Anderson at pages 272 and 273 of these hearings before the Ways and Means Committee. You were being asked there about the Executive order which had been signed by Mr. Polk, the one of February 26, 1919, and the question asked by Mr. Moore was:

"Do you know who drafted that Executive order signed by Frank L. Polk?

"MR. GARVAN: I can give you my best belief, based upon the course of business in the office, that it was drafted by Mr. Mitchell Palmer after consultation with Mr. Bradley Palmer and, undoubtedly, after consultation with Mr. Hoguet, who was the principal adviser on patents."

Then after two or three more questions and answers, you said this:

"Of the Chemical Foundation, Inc., yes. And, furthermore, I think you will find that order received the consulting advice of every big patent lawyer in the country representing these big manufacturers."

I want to ask you what you meant by that statement as to the order having received the

consulting advice of every big patent lawyer in the country representing these big manufacturers.

MR. ANDERSON: I object.

THE COURT: I do not understand. Is it ambiguous—the statement?

MR. KRESEL: The statement is not only ambiguous, your Honor, ambiguous as to who the big patent lawyers were, but who the big manufacturers were that they represented, what time it was when they gave their advice. As to all of those I would like to have Mr. Garvan state what the fact was and what he was talking about here when he gave that answer. I think he has a right to explain that.

THE COURT: You may ask him if you desire the time and circumstances under which it was done. But what he meant by that statement I do not think is——

MR. KRESEL: I will reframe the question, your Honor.

Q. 503. I will ask you, Mr. Garvan, to state the names of the patent lawyers that you mentioned here, where you say "every big patent lawyer in the country," and the circumstances under which that order received, as you say, the consulting advice of such lawyers?

MR. ANDERSON: To the first part of the question I have no objection, except the general objection. As to the second part, I object on the ground that of course the statement speaks for itself, that counsel cannot read the testimony into the record and then have him explain it by cross-examining his own witness.

MR. KRESEL: I am not reading it. You read it in. I am reading something that you read in.

MR. ANDERSON: All right. If that is true, I had overlooked that fact, that I read it in.

MR. KRESEL: Yes, you did.

THE COURT: You may take the answer.

A. Pennie, Davis & Marvin, Mr. Townsend, of whatever it is, Byrnes, Townsend and Brickenstein, some name like that, and Mr. Rogers of Chicago passed upon that when they advised the people who took out licenses, their clients, that the title based on this order was good.

Q. 504. Was this advice that you speak of as having been given by these patent lawyers with reference to the order given prior to the making of the order by Mr. Polk or thereafter, if you can state?

A. No, I know nothing of their having given any advice before. I gave there on the other page the people I thought had been consulted about the drawing of the order. What I meant was that these men had subsequently passed upon our title, which was based on the order, and on their advice these people had taken out licenses and gone ahead to manufacture.

MR. ANDERSON: I object to and move to strike out the last part of the answer as to what he meant.

THE COURT: Motion granted.

MR. KRESEL: Is it granted, your Honor?

THE COURT: The motion is granted. The answer was not responsive and he was volunteering some information which was really the information asked for by your original question. It is not responsive and may be stricken out.

MR. KRESEL: That part of the answer which was to the effect that the advice by these lawyers was given after the order was made—may that stand?

THE COURT: Yes. The motion did not go to that, I understand, Colonel Anderson, but to the last part.

MR. ANDERSON: I did not understand.

MR. KRESEL: My question is whether that part of Mr. Garvan's answer which is to the effect that the advice by these lawyers was given after the Executive order had been drawn could stand. The Court says he did not understand you directed your motion to that part of the question.

MR. ANDERSON: I did not direct that particular motion to that part of the question, but it is subject to my general objection.

MR. KRESEL: Yes, I understand it is subject to your objection, but you are not moving to strike that out?

MR. ANDERSON: Not on the grounds stated in that motion, no.

THE COURT: The portion of the answer with respect to which the motion is granted begins with the words "what I meant."

Q. 505. In what connection, Mr. Garvan, was the advice given by these patent lawyers representing the manufacturers that you mention in this answer that I read to you from the record?

A. In connection with their clients' taking out licenses based on our title.

Q. 506. I read to you, Mr. Garvan, one answer that was read in by Colonel Anderson at page 394 of the Hearings before the Committee on the judiciary. Speaking of licenses, you say:

> "Our rates vary on different patents, of course; some licenses are only for one-half of one per cent. royalty or one per cent. royalty, but all are based on the idea of encouraging manufacturing. For instance, as I pointed out, our nitrate patents included a process of making nitrate from the air, which was another reason for getting those patents out of Government ownership. The possibility of developing Muscle Shoals is within those patents. The Muscle Shoals project could not go ahead without our nitrate pat-

ents. If those patents had been given back to Germany after the war, Muscle Shoals would be on your hands to a very great extent, for one of the large elements of value in those patents is the making of nitrates from the air, the so-called Haber process. Those were the patents the completion of which made the European war possible."

That was your statement. Now, do you know how many Government plants there are at Muscle Shoals?

A. I know there are at least two.

Q. 507. And do you know how they are designated?

A. Plant No. 1 and Plant No. 2.

Q. 508. As to which of the plants were you giving these answers that I have just read to you?

A. Plant No. 1.

Mr. Anderson: Just a minute. I object. There is no reference to any particular plant; it is the Muscle Shoals project; and it is nothing but explaining or undertaking to explain an answer in evidence.

Mr. Kresel: I would say that the witness has a right to state, quite irrespective of his statement, even which of the plants he was referring to when he was giving this testimony. The statement is ambiguous as to that.

The Court: I do not see that the witness can change by his testimony the fact with regard to the Muscle Shoals plants. If the facts are that there was one which came under that process, or if there were two which came under that process, it seems to me that is a fact which is more or less discussed and made a part of the statement. I do not know that he can now explain the statement, because that is a past event. His statement

is made. If the facts are that there is only one Muscle Shoals plant which was operated in a way so that it required the Haber process, I do not see why that fact cannot be shown; but I do not see that the modification at this time of that statement is proper.

MR. KRESEL: I am not seeking to have it modified. I will ask the fact, your Honor.

THE COURT: Question withdrawn?

MR. KRESEL: Yes, I will withdraw the question, though it has been answered. I assume that both the question and answer, then, will go out.

(Q. 508 and answer repeated as above recorded.)

THE COURT: That question, I think, is objectionable, and I think the objection to it is to be sustained and the answer stricken out.

Q. 509. Do you know, Mr. Garvan, whether one or both or either of these plants at Muscle Shoals was constructed for production of nitrates by what is known as the Haber process?

MR. ANDERSON: Does he know of his own knowledge?

A. No.

MR. KRESEL: The answer is "No."

MR. ANDERSON: Then it is all right. I did not think he knew.

MR. KRESEL: I now offer in evidence a report prepared by the Nitrate Division, Ordnance Office, War Department, assisted by the Fixed Nitrogen Research Laboratory, Department of Agriculture, entitled "Report on the Fixation and Utilization of Nitrogen."

MR. ANDERSON: We will note an objection to that. I have not had a chance to examine it, but I note the objection, of course, that as to proof of

facts stated therein it is not a report required by law, or any high officer.

THE COURT: By whom was the report made, Mr. Kresel?

MR. KRESEL: This report was made by the Nitrate Division, Ordnance Office, War Department, assisted by the Fixed Nitrogen Research Laboratory of the Department of Agriculture. It is accompanied by a letter of transmittal dated March 29, 1922, from C. C. Williams, Major General, Chief of Ordnance to the Secretary of War. There is attached thereto a certificate reading as follows: (Reading.)

In the letter of transmittal by Major General Williams to the Secretary of War, the following statement is made (reading).

THE COURT: The objection is overruled. The document is admitted.

Received in evidence and marked "Defendant's Exhibit No. 140." (*Not printed.*)

MR. KRESEL: I will read from this report two or three paragraphs, your Honor. It is under the heading, "Nitrogen Fixation Activities of the United States Government," page 8 of this report (reading).

That is all, Mr. Garvan.

MR. ANDERSON: If your Honor please, I have not been able to look at the large number of statements of figures introduced here today and therefore I am compelled to ask leave to reserve cross-examination on those statements until I can look at them, because I have not seen them. They were not furnished until they were presented in Court. I understand counsel does not object. On the other part of the evidence, I will ask the witness a few questions.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 509-a. Mr. Garvan, is that your signature to this letter?

A. Yes, sir.

MR. ANDERSON: I offer in evidence photostatic copy of the oath of office of Francis P. Garvan which the witness has just identified, as an attorney in the office of the Alien Property Custodian, showing the date of entrance on duty as November 12, 1917, and ask that it be identified as Plaintiff's Exhibit No. 609. Counsel agree that we put them in now instead of waiting for the rebuttal.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 609." (*See Exhibits, Vol. II, page 1446.*)

XQ. 510. Is this your signature, Mr. Garvan?

A. Yes.

MR. ANDERSON: I offer in evidence the oath of office of Francis P. Garvan as Alien Property Custodian just identified by the witness, sworn and subscribed to on the fourth day of March 1919, showing the date of entrance upon duty as March 4, 1919.

XQ. 511. You did enter upon and begin the discharge of your duties on that day, did you not?

A. I did.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 610." (*See Exhibits, Vol. II, page 1447.*)

XQ. 512. You continued to serve in the position of Alien Property Custodian for which you thus qualified from the 4th of March, 1919, until what date? I think you stated it, but I want to get it right.

A. I think it was the 12th of March.

XQ. 513. The 12th of March, 1921?

A. 1921, somewhere along in there. It was a few days after the 4th.

MR. ANDERSON: I offer in evidence minute of the Noon Conference of May 16, 1918, at which there were present: The Alien Property Custodian, Messrs. Horne, Bradley, Dunn, Garvan, Dreher and Ferry. I ask that the same be read in evidence as Plaintiff's Exhibit No. 611.

Received in evidence and marked "Plaintiff's Exhibit No. 611." (*See Exhibits, Vol. II, page 1448.*)

THE COURT: That is of what organization?

MR. ANDERSON: The Alien Property Custodian. I am going to identify it just as soon as it is handed to me after marking.

XQ. 514. You knew who the gentlemen named there as being present were, do you not?

A. I am not quite sure.

XQ. 515. Messrs. Horne——

A. Yes, sir.

XQ. 516. Bradley?

A. Yes, sir.

XQ. 517. Dunn?

A. Yes, sir.

XQ. 518. Garvan—that is yourself?

A. Yes, sir.

XQ. 519. Dreher and Ferry?

A. Yes, sir.

XQ. 520. They were all officers in the office of the Alien Property Custodian, were they not?

A. Yes, sir.

XQ. 521. This is dated May 16, 1918, and the Alien Property Custodian at that time was Mr. A. Mitchell Palmer?

A. Yes, sir.

XQ. 522. To the best of your knowledge and information that conference was held as shown by these minutes (handing witness)?

A. I had not seen it (examines paper). Yes, sir.

XQ. 523. Mr. Garvan, you were nominated for the position of Assistant Attorney General of the United States also, were you not?

A. Yes, sir.

MR. ANDERSON: The minute I need not take the time to read. It merely shows Mr. Garvan's appointment as head of the New York office of the Alien Property Custodian in charge of the Bureau of Investigation.

XQ. 524. At what date were you nominated for that position, do you recall?

A. I do not remember.

XQ. 525. About what date?

A. I beg your pardon?

XQ. 526. About what date?

A. I think it was about the time that Mr. Palmer's house was blown up. Now, that was I think the summer of 1919.

XQ. 527. The summer of 1919 or about that time?

A. Yes.

XQ. 528. In fact your nomination was confirmed by the Senate was it not?

A. Yes, sir.

XQ. 529. I do not believe you ever took the oath of office as Assistant Attorney General, did you?

A. No, sir. I worked on three or four special matters.

XQ. 530. You had an office in the Department of Justice, however?

A. Yes, sir.

XQ. 531. Were you really in charge of the Criminal Division?

A. No, in charge of the Bolshevism and the Packers decree and two or three other things of that kind.

XQ. 532. From about the summer of 1919 on to

March, 1920 you were connected with the Department of Justice, although you never took the oath of office as Assistant?

A. I did volunteer work there, yes. I did not get any salary. I could not serve under both.

XQ. 533. I am very glad you stated that, because I know it is a fact that you did not. Mr. Garvan, when did you agree to become President of the Chemical Foundation?

A. To the best of my recollection from anything that I can inform myself from, it was some time after February 16th. You put in a letter from Mr. Hoguet saying on February 16th they induced me to become a director.

MR. KRESEL: What year was this, please?

THE WITNESS: 1919.

XQ. 534. It was in 1919?

A. Yes, sir.

XQ. 535. I read to you from your testimony before the sub-committee of the Committee on the Judiciary in the United States Senate, in the hearings on the Senate Resolution 77 which has been referred to. You know what I mean, do you not?

A. Yes.

XQ. 536. You were asked by the Chairman—who I believe was Senator Shortridge, was it not?

A. Yes, sir.

XQ. 536. (continued) At page 392:

> "THE CHAIRMAN. In order to fix it in the record, when did you become Alien Property Custodian?
>
> "MR. GARVAN. March 4, 1919.
>
> "THE CHAIRMAN. When was the sale made to the Chemical Foundation?
>
> "MR. GARVAN. The order directing the sale was made February 26, 1919 and the sale was actually consummated April 10, 1919.

"THE CHAIRMAN. And you became the President of the Chemical Foundation when?

"MR. GARVAN. I was the President from the beginning. The date of the recordation of our certificate is the 19th of February, 1919. So that I was President of the Chemical Foundation at a time when I was a dollar-a-year man in the employ of the Government, but when I had no expectation of doing anything but step out and go back and devote myself to my private practice and thus build up, if possible, the chemical industry in this country."

You did testify to that, did you not?

A. Oh, yes, certainly.

XQ. 537. Does it correctly state the facts?

A. Well, it depends upon whether—I became President but I was not formally elected by the incorporators until March 8th. I had consented to become President of the corporation to be formed.

XQ. 538. It had been understood really throughout the transaction that you were to be President, had it not, Mr. Garvan?

A. Not until quite late in the transaction; it was not even suggested at first.

XQ. 539. How late, would you say, in the transaction? You say here from the first.

A. The only thing that I can recollect—that I can place it by is that it must have been after the 16th of February, because on that date Mr. Hoguet wrote to Mr. Palmer, "We have induced Mr. Garvan to become a director", and therefore at that time it had not been suggested that I become President.

XQ. 540. As a matter of fact, you know it was agreed around that time that you should be President of The Chemical Foundation?

A. Yes.

MR. KRESEL: Around what time?

MR. ANDERSON: Around the 15th of February.

A. Somewhere around that time. I would not be able to place the date.

XQ. 541. Now, Mr. Garvan, you continued, as I understood you to say, as President of The Chemical Foundation from the time of your original election down to the present time?

A. Yes, sir.

XQ. 542. This morning some evidence was introduced as to a certain Bill pending in Congress before the Ways and Means Committee of the House, and afterwards before the Senate, for a dye embargo, among other things?

A. Yes, sir.

XQ. 543. You took quite an active part as President of the Chemical Foundation in undertaking to secure a dye embargo, did you not?

A. Very active.

XQ. 544. You did?

A. Very active.

XQ. 545. You and the officers of The Chemical Foundation earnestly urged the adoption of a dye embargo?

A. We did.

XQ. 546. You were at that time Alien Property Custodian?

A. Yes, sir.

XQ. 547. You were at that time discharging duties in connection with the Attorney General's office such as you have described?

A. Yes, sir.

XQ.548. And had been confirmed by the Senate as Assistant Attorney General, but had not qualified for the position?

A. Yes, sir.

XQ. 549. Mr. Garvan, have you ever been in Germany?

A. Yes, sir.

XQ. 550. When?

A. I was there—now let me see—I think I have made two trips through Germany. In 1908 or 1909, along there.

XQ. 551. And those trips were about that same time?

A. One summer following another summer.

XQ. 552. You were over there as a——

A. Tourist.

XQ. 552. (continued)—tourist?

A. Pure and simple.

XQ. 553. Approximately how long were you in Germany?

A. Well, I suppose a month each time; possibly less.

XQ. 554. Then the information which you testified yesterday as being in your possession as to the educational system in Germany and the economic system of Germany and the organization of industry in Germany was all derived from other sources than any personal knowledge on your part, was it not?

A. Oh, yes.

XQ. 555. You spoke of the fact that the dye industry in Germany maintains schools for the education of the people in the conduct of that business. Do you not know as a fact that the United States Steel Corporation does the same thing in the United States?

A. I do not, no.

XQ. 556. You do not know that?

A. No.

XQ. 557. Do you not know as a fact that a great many industrial concerns in the United States, like Westinghouse and General Electric do maintain schools for the education of youths in their particular branches of business?

A. I do not know.

XQ. 558. You also spoke on yesterday of the fact

that Germany had a large fund for propaganda in the United States. In connection with your investigations, did you not find that England and France also had a large fund for propaganda in the United States?

A. I did not.

XQ. 559. You did not find that?

A. I did not.

XQ. 560. You know, as a matter of fact, that the United States had quite a large propaganda fund during the war, do you not?

A. You mean selling Liberty bonds?

XQ. 561. No, no, I mean for the maintenance of propaganda, publicity?

THE COURT: You mean in America?

MR. ANDERSON: Or in foreign countries as well.

A. I had no knowledge of any such thing. It never came within my labors.

XQ. 562. Never came within your knowledge?

A. No.

XQ. 563. I would like you to define a little more definitely for me, if you can, just what your duties were as Chief of the Bureau of Investigation through which position you got the information you described.

A. Yes. For the first two or three months it was what I would call absolutely clerical work. It was receiving this tremendous number of reports on property that poured in, arranging a system for the verification of the oaths and arranging a system of dividing them so that those that looked suspicious and those that fitted in with information that might come in, might be further investigated as well as those who reported no property and who we had reason to believe might have property; in other words, to sift those that were apparently all right from those that should require more investigation, and so forth. That was the first

thing that was done, to try and see what was to be done.

Then we wrote letters to everybody that we could think of in the country who might have any knowledge of German property; banks, trust companies, tax assessors, county agents, mortgage companies, everybody that touched money or property who might have any record of German ownership. That was our next step.

Then, of course, patriotic citizens sent in an enormous amount of information, and then we began to gather it from the seven or eight other information bureaus of the Government, Military Intelligence, Naval Intelligence, War Trade Board Intelligence, Secret Service of the State Department, Secret Service of the Treasury Department, the Department of Justice, and these National Defense organizations, everywhere that we could get information. Then we began to send out the individual men to the individual places to examine the individual suspected ones, and so forth. Then we found that most of this material was in New York City; so we established a New York office to be nearer the source.

XQ. 564. In your New York office, did you have charge of the examination of such concerns as the Kuttroff, Pickhardt & Company, the Cassella Color Company and the H. A. Metz Company and the Farbwerke-Hoechst Company that are referred to in Mr. Palmer's report?

A. Yes, sir.

XQ. 565. You had charge of that?

A. With the assistance of Mr. Choate.

XQ. 566. You were in charge of that work?

A. I was in charge.

XQ. 567. You were in constant charge of that work I assume?

A. Yes. Mr. Choate had the next room to me. There was just a door in between.

XQ. 568. I want to ask you about some of these concerns to clear up certain points, some of which you have mentioned like the Bayer Company. We will take the Bayer Company first. Do you recall when the investigation of the Bayer Company was made? You said it was on the 12th of December, 1918, if I recall?

A. My recollection is that that was quite early, that that was one of the first. I think that was the first one we appointed the directors in. I am not sure about that.

XQ. 569. The actual auction took place on the 12th of December, 1918, did it not?

A. Yes, sir.

XQ. 570. What was the proceeding after the auction, do you know? I mean, how long before the property was transferred. What did you do then?

A. The proceeding then would be for the price and purchaser to go before the Sales Committee which consisted of the five men who are now Trustees of the Foundation; and the Washington office would help clear the title and the lawyers for the purchasers would go down there and look over their necessary muniments of title; and then upon the approval of the Advisory Committee on Sales as to price and as to purchaser, the deed would be put through. Does that answer the question?

XQ. 571. That is pretty good. Now, do you know when the actual transfer of the property of the Bayer Company took place?

A. No, that I do not know. I could find out I suppose.

XQ. 572. After the sale, these various proceedings which you indicate usually took some little time, did they not?

A. Sometimes some time and sometimes not, more or less.

XQ. 573. In property the size of the Bayer Company, it would naturally take some weeks?

A. Well, there are just as nasty questions that come up with small companies as with large companies.

XQ. 574. If I were to show you the record that the old directors of the Alien Property Custodian did not resign until late in January, what would you say?

A. I would say that was pretty quick.

XQ. 575. You would say that was pretty quick for turning it over?

A. Yes, sir.

XQ. 576. Do you not know that as a matter of fact the terms of sale gave only thirty days to approve the sale to the purchaser?

A. I remember it now that you remind me.

XQ. 577. So that they had thirty days from the 12th of January to decide whether they would approve the purchase at all?

A. From the 12th of December.

XQ. 578. From the 12th of December to the 12th of January?

A. Yes.

XQ. 579. Thirty days?

A. Yes, and we could get an adjournment of that date.

XQ. 580. Then the turning over the property?

A. I think that had to be the turning over.

XQ. 581. They had thirty days in which to reject bids?

A. That is right. We had to decide if we were going to reject.

XQ. 582. Within thirty days?

A. Yes.

XQ. 583. Mr. Garvan, you are familiar with the provisions of the Trading with the Enemy Act that

gave to the Alien Property Custodian the power to reject any bid upon the Executive order of the President, stating the reasons therefor in writing and to re-sell the property?

A. Yes, sir.

XQ. 584. Did you as chief of the Bureau of Investigation ever suggest the rejection of the bid for the Bayer property?

A. For the Bayer property?

XQ. 585. Yes.

A. No.

XQ. 586. You testified on direct examination that you were greatly alarmed or concerned by the fact that one company——

A. (interposing). You misunderstood me. I was only alarmed at the fact that the directors bore German names. The moment I knew the personality of the men who bore German names, that they had been American citizens for a hundred years as far as that company was concerned——

XQ. 587. That is not quite the point I was getting at. But you were greatly alarmed at the prospect of one company controlling as many as 1200 patents?

A. No, that was not the thing that alarmed us. They were entitled to control those because they went with that plant.

XQ. 588. Well, I haven't your testimony in the record before me. I have not been able to go through it.

A. I was alarmed at the prospect or possibility of men with German tendencies going on and buying up them all. Of course, if we had known that they had been actual Germans, they never would have gotten that property.

XQ. 589. If there had been any reason for any uneasiness on your part as to the interests of the

country being protected, would you not have recommended to the President a rejection of the bid and a re-sale

A. Oh, certainly.

XQ. 590. And that could be done in any property?

A. That was only my first flash at the fact of their being German names.

XQ. 591. That could be done in any property?

A. Oh, yes.

XQ. 592. And that was sometimes done, was it not?

A. Oh, quite frequently.

XQ. 593. As a matter of fact, you knew at the time this sale was made or before it was actually consummated, that the purchaser, the Sterling Products Corporation, had an arrangement and understanding at the time of the sale with the Grasselli Chemical Company?

A. Yes, sir.

XQ. 594. That the Grasselli would buy its patents and part of its property?

A. One to take the dye side of the business with all its appurtenances, building, patents, etc., and the other to take the drug side with all its appurtenances.

XQ. 595. The drug side being chiefly aspirin?

A. Yes, sir.

XQ. 596. That was practically all they made, as far as you know

A. I do not know if it was all they made. I know that the chief product was aspirin.

XQ. 597. The dye side of that plant was sold to the Grasselli Chemical Company?

A. Grasselli Chemical Company.

XQ. 598. Do you know what they gave for it?

A. I do not know.

XQ. 599. Did they not have to disclose the ar-

rangement between them to the Alien Property Custodian?

A. I don't think they did. They were two splendid American concerns. What their business was was between themselves.

XQ. 600. Was the Sterling Products Company an old company?

A. Yes.

XQ. 601. Had they been in business long?

A. Yes, they made syrup of figs for fifty years.

XQ. 602. The Grasselli Company took over about 500 of those patents, did they not?

A. I don't know how many they took over.

XQ. 603. Dye patents?

A. I don't know.

XQ. 604. Any how they were to take the dye pattents?

A. They were to take the dye side of that business.

XQ. 605. And the price paid for that property was about $5,250,000, something like that, was it not?

A. It was.

XQ. 606. Mr. Garvan, did not Mr. Wigglesworth of the National Aniline Company go up and make an inspection of this property and report to you on it or state to you the result of his inspection?

A. I don't think Mr. Wigglesworth did. I think Mr. Matheson of his company was the only one I saw.

XQ. 607. Matheson was the only one you saw?

A. That I remember.

XQ. 608. Did Mr. Matheson ever tell you what he thought the physical property was worth, that is, the manufacturing plant?

A. He did not, because he was a prospective bidder. He did not tell me. He told me how much the patents were worth.

XQ. 609. Yes, you testified to that. Now, the

Farbwerke-Hoechst Company was what has been talked of here as one of the Metz Companies?

A. Yes.

XQ. 610. That was a New York Corporation?

A. Yes, sir.

XQ. 611. You had a very exhaustive audit and examination made of that property, did you not?

A. Very.

XQ. 612. Who paid for it, Mr. Garvan?

A. Mr. Metz.

XQ. 613. As a matter of fact, the Alien Property Custodian did not have any appropriation for the purpose of making these audits and investigations in advance of the seizure of properties, did he?

A. No, he did not.

XQ. 614. You always made their owner pay that?

A. Yes, I think we did.

XQ. 615. You charged that up to him and made him pay?

A. Well, if his books were straight, it did not cost much.

XQ. 616. I know, but in the case of Mr. Metz it cost $40,000?

A. Yes, that was because of the condition of his books, disguising the relations with Germany.

MR. ANDERSON: I do not want to move to strike out the witness's answer, your Honor. I said "It cost $40,000"? And he said "Yes." Now he goes on to explain. I know the witness does not want to embarrass me, and therefore I just want to ask him not to do that.

THE COURT: Let the non-responsive part of his answer be stricken out.

XQ. 617. That examination showed the earnings and profits of the Farbwerke-Hoechst Company for a period of five years, did it not?

A. I assume that to be true.

XQ. 618. It was a very exhaustive examination made by Wolfe & Company, was it not?

A. Very.

XQ. 619. That report was made to you, was it not?

A. Yes, sir.

XQ. 620. Did you familiarize yourself with the report?

A. I did at the time.

XQ. 621. According to the report of Mr. Palmer, which is in evidence, as is also this portion of it, filed as an exhibit with the answer I think it shows that the earnings of that business were very large.

MR. KRESEL: Which business?

MR. ANDERSON: Of the Farbwerke-Hoechst or Metz Company.

MR. KRESEL: I doubt whether there is anything in the report about that.

MR. ANDERSON: I think it shows that. I can not remember all of them.

XQ. 621. (Continued.) Anyhow whatever the earnings were, they were shown by that report, were they not?

A. Undoubtedly. He made up a whole new set of books and set of everything.

XQ. 622. Take the Badische Company. Who represented that in New York—in America?

A. Kuttroff, Pickardt & Company. You do not mean the lawyers?

XQ. 623. No, the agents.

A. Kuttroff, Pickardt & Company.

XQ. 624. They had been for a number of years the representatives of the Badische Compony, had they not?

A. They had.

XQ. 625. You had a very exhaustive examination made of their records and ther accounts?

A. Very.

XQ. 626. They did not have any plant in the United States, did they?

A. No, an assembling and mixing plant; down on Broadway, a warehouse.

XQ. 627. Just a warehouse?

A. Yes.

XQ. 628. They were merely distributing agents in the United States, and importers?

A. Yes, sir.

XQ. 629. That is all?

A. Yes, sir.

XQ. 630. They exported to a large extent dyestuffs, did they not?

A. Yes, sir, mainly, I think.

XQ. 631. Mr. Palmer in his report states that the company had been selling for the German house for years high grade indanthrene dyes which it received from the German house at fixed prices and he did not include the sums described as royalties. Their business was largely in that class of dyes as I understand it, like indanthrene dyes?

A. I think a general business.

XQ. 632. They handled all the Badische business in this country?

A. Yes, they had a full line.

XQ. 633. They were very large importers of dyestuffs?

A. Oh yes.

XQ. 634. Do you know whether they were largely patented dyes, or can you say?

A. Not a great proportion of them were patented, probably. The indigo is the largest, and then sulphur colors, and they were not patented.

XQ. 635. They were at that time, were they not?

A. No.

XQ. 636. The indigo had expired?

A. I think the indigo had expired, but I would not be certain of that.

XQ. 637. Had the indanthrene patents expired?

A. No.

XQ. 638. They were still in existence?

A. They were, I think. I know they were.

XQ. 639. As a matter of fact, they were assigned to the Chemical Foundation?

A. Yes.

XQ. 640. And you have licensed them today?

A. Yes.

XQ. 641. Did not the reports in that instance show there were very large earnings which in fact had been charged up, whether rightly or wrongly, to royalties?

A. I would have to refer to that report.

XQ. 642. I refresh your memory by reading from Mr. Palmer's report: "During the years 1915 and 1916 the sum of $701,944.34 was credited on the books of the German house and subsequently remitted under the head of indanthrene royalties." As far as you know that was true, was it not?

A. I do not think it was true. I think it was the means of getting the profits of this concern back——

XQ. 643. Well, I mean it was credited.

MR. KRESEL: The witness had not finished his answer.

XQ. 644. All right, but you do think it was true, as a way of getting the money back to Germany?

A. Yes, sir.

XQ. 645. But the statement that it was credited to indanthrene royalties on the books is a correct statement in Mr. Palmer's report, is it not?

A. If it is in Mr. Palmer's report, it is correct.

XQ. 646. You believe everything that is stated in that report as true, don't you?

A. I think everything is correctly stated.

XQ. 647. "In like manner, in 1914, the sum of $477,100 was credited and remitted ostensibly as a return of advances made years before by the German house for expenses of the New York concern." Do you recall that element

A. I remember that those charges were made there on the books, sending all the earnings of the New York house back to Germany, and were urged by us as a demonstration that this was a part of the Home Office and not an independent American concern.

XQ. 648. I am not questioning that that was the fact at all. All I am trying to get at is that these figures did show on the books, as you had them investigated, as part of the profits of the business?

A. In one place on the books. Whether the rest of the books contradicted it or not I do not know. The whole of the statement of Kuttroff, Pickardt & Company is published in full in one of those hearings.

XQ. 649. The report also shows there were very large profits on importations in the Deutschland?

A. The submarine, yes.

XQ. 650. All of that report was made to you, was it not?

A. Yes, sir.

XQ. 651. And by you transmitted to Mr. Palmer?

A. Yes, sir.

XQ. 652. The report on the Cassella Color Company was also made to you, was it?

A. Yes, sir.

XQ. 653. The report in the Roessler & Hasslacher Company and subsidiaries?

A. Made to Mr. Choate.

XQ. 654. I mean you were the Chief of that division?

A. Yes. I mean I did not pay the close personal attention to that one that I did the other three. But I did go over it, of course.

MR. KRESEL: May I say that I am told the Roessler and Hasslacher concern is not a dye concern?

XQ. 655. I know it is not a dye concern, but it is one of the concerns mentioned in Mr. Palmer's report here, that is what I am getting at.

A. Yes.

XQ. 656. Do you know what became of their patents?

A. Why, I think—no, I do not.

XQ. 657. The Hasslacher concern had plants in this country, did it not?

A. Yes.

XQ. 658. And you do not know what became of their patents?

A. No, I do not.

XQ. 659. Merck & Company. There was a report made on Merck & Company to you?

A. Yes, sir.

XQ. 660. Was the property of Merck & Company ever sold, do you know?

A. I think it was.

XQ. 661. Do you know what became of the patents?

A. I do not think they had many patents. I don't know.

XQ. 662. The Kalle Color & Chemical Company—I supose that is it, though I do not know how to pronounce these names——

A. Yes, that is right.

XQ. 663. Do you recall that one?

A. Yes, sir.

XQ. 664. According to the figures which I have before me, which I will ask you if you recall, this company paid royalties amounting to $16,750 a year for three and a half years, aggregating $58,625, for the use of certain German patents. Do you recall that?

MR. KRESEL: Paid to whom, Colonel?

MR. ANDERSON: Paid to the German owners of these patents.

A. No, I do not recall that. Before the war, you mean?

XQ. 665. Yes.

A. No, I do not.

XQ. 666. You do not recall it?

A. No, sir.

XQ. 667. And that they showed earnings of something like 200 per cent. in 1915 and 1916 on a $300,000 capital; do you recall that?

A. On imports?

XQ. 668. No, on their business.

A. They were solely imports.

XQ. 669. No, they had property in this country?

A. I do not know.

XQ. 670. Do you know what became of those patents?

A. The Kalle patents? I think they were with us. I am not positive.

XQ. 671. You think they were assigned to you?

A. I think so.

XQ. 672. To sum the matter up, as I understand it, you as Chief of the Bureau of Investigation, where you felt there was doubt as to the ownership of a property or the stock therein or an interest therein, would have a careful investigation made of that property?

A. I would have to have more than doubt. I would have to have something to go on when I went into a man's place.

XQ. 673. Then you would have an audit made to show the status of his books, his reports, and the conditions of his business. Is that true?

A. Not always. Sometimes I would go over the

books myself—sometimes I would go through them myself.

XQ. 674. But you would satisfy yourself as to the situation?

A. Certainly.

XQ. 675. And where you thought there was any German interest, or before you seized a property, you would make a careful audit and investigation, isn't that true?

A. Where they denied German ownership, as they did in this case.

XQ. 676. Speaking not only of that particular period, but later as Alien Property Custodian, when you handled the whole matter, in the event that property was seized, before you sold it, a complete audit for five years was made, was it not?

A. It was in some cases generally, before we sold it.

XQ. 677. Yes?

A. Oh, yes, a complete audit was made.

XQ. 678. A complete audit for five years was made?

A. Yes, sir.

XQ. 679. And then you also had an appraisal of the property made?

A. Yes, sir.

XQ. 680. And then you got out a prospectus showing the results of the audit for five years, and the values of the appraisals, would you not?

A. Yes, sir; that is, we would have an appraisal of physical property.

XQ. 681. Did you not have an appraisal of the whole property?

A. We could not appraise intangibles. We would have one of those appraisal companies go through a factory or anything of that kind.

XQ. 682. Would you not appraise good-will as one of the items of the business?

A. I do not think we ever appraised good-will.

XQ. 683. Would you not appraise the going concern value?

A. The what?

XQ. 684. The going concern value?

A. I do not think we did. I am not sure. I think it was a physical appraisal.

XQ. 685. You think it was just a physical appraisal?

A. I think so, with the balance sheet showing the profits.

XQ. 686. What was the reason for showing the profits for five years if you do not want to show the going concern value?

A. Then the purchaser could make up his own mind as to the good-will.

XQ. 687. You haven't any of those appraisals with you, have you?

A. I have got them with me. I haven't got them all. Oh, no—the appraisals.

MR. KRESEL: We have got the prospectus.

A. (continued) The prospectuses we have.

MR. KRESEL: Here is one, Colonel. (Handing paper.)

XQ. 688. Now take the Cassella Color Company. You seized the patents in that case, did you not, or rather, the Alien Property Custodian seized them?

A. Yes, sir.

XQ. 689. What became of them?

A. They were sold to us.

XQ. 690. They were sold to you?

A. Yes, sir.

XQ. 691. Did you have a full report made on that company before their patents were seized?

A. The company was gone.

XQ. 692. It was?

A. Yes there was nothing left but the signs.

XQ. 693. But you seized the patents?

A. Yes, sir.

XQ. 694. And sold them to The Chemical Foundation?

A. Yes, sir.

XQ. 695. At page 100 of the Answer, from Mr. Palmer's report, I read the following, speaking of the enactment of the amendment of November 4th to the Trading with the Enemy Act:

> "Until the enactment of this amendment it had not been possible to take over German patents. These patents, as had been already indicated formed a collossal obstacle to the development of the American dyestuff industry."

Mr. Garvan, do you agree to that statement that they formed a colossal obstacle in the development of the dyestuffs industry?

A. Certainly.

XQ. 696. What proportion of the dye business in the United States did those patents cover?

A. Between four and five per cent.

XQ. 697. Was it an essential portion of the business?

A. The essential portion.

XQ. 698. It was the essential portion of the business?

A. Yes, sir, if you mean the complete dye industry.

XQ. 699. It furnished the key to the business, did it?

A. Well, if you are not able to furnish the whole line, you won't very shortly be allowed to furnish any.

XQ. 700. Now hold on. I know you do not want to argue with me.

A. No, no.

XQ. 701. You want to answer. I asked you if the patent-controlled dyestuffs furnished the key to the business.

A. I would like to ask you what you mean by "furnished the key to the business."

XQ. 702. Then we will leave it right there. Your answer is all right. Now, at the time that these patents were taken over, as you described on yesterday, that is, the patents now sold to The Chemical Foundation, you were familiar with the system of the Federal Trade Commission of licensing patents, were you not?

A. Fairly so.

XQ. 703. You knew that a considerable number of these patents had been licensed by the Federal Trade Commission under Section 10, did you not?

A. Yes, sir.

XQ. 704. You knew that the Federal Trade Commission issued licenses to all substantial manufacturers in the country that desired to use those patents, did you not?

A. Yes, sir.

XQ. 705. You knew that their license fee was a flat royalty of 5 per cent. on gross sales, and afterwards had been changed in some instances to 2 per cent., did you not, in a general way?

A. In a general way. I did not know exactly whether that was always their fee.

XQ. 706. And you were familiar with the provisions of the Trading with the Enemy Act with respect to the power of the Courts of the United States to deal with these licenses after the war, were you not?

A. Yes, sir.

XQ. 707. Had you ever heard it suggested that any American manufacturer could not get a license

from the Federal Trade Commission to use any alien-owned patent in the United States?

A. I had not.

XQ. 708. After you became Alien Property Custodian and seized German patents, did you not grant licenses yourself to certain persons in the United States to manufacture or use them?

A. The Government. I do not remember any other cases.

XQ. 709. Did you not grant licenses to some manufacturers?

A. I have no recollection of it. I would have to be refreshed on that.

XQ. 710. But did you have any doubt as to your power to grant licenses when you had seized the patent, just as much to a manufacturer as you could to the Government?

A. I do not think I did. I do not remember that that question came up at that time.

XQ. 711. Mr. Palmer testified that the Federal Trade Commission desired to continue licenses under these patents after they were seized by him, and he objected on the ground that he was then the owner of the patent. Do you recall that testimony?

A. I was not in the room all the time.

XQ. 712. Did you ever discuss that matter with Mr. Palmer at all before or after you became Alien Property Custodian?

A. No, I do not think so.

XQ. 713. Mr. Garvan, do you know of any obstacle that existed to any manufacturer in the United States obtaining a license on reasonable terms to use alien-owned patents during the war, through the Federal Trade Commission or otherwise?

A. Any obstacle?

XQ. 716. Any obstacle to their obtaining it?

A. To their obtaining it?

XQ. 717. Obtaining the licenses.

A. No.

XQ. 718. None whatever?

A. No.

XQ. 719. Mr. Garvan, I read into the record the other day from the Hearings before the Finance Committee of the Senate on Bill H. R. 8078, pamphlet entitled "Dyestuffs," with which you are familiar, I know.

A. Yes.

XQ. 720. At page 520 after reciting the sale of the Bayer Company and the incidents connected with that sale, you said, speaking of prospective purchasers or possible purchasers of these patents if they were sold:

> "They could go ahead and buy these other patents for very little and have a monopoly for sure, and then they could just sit back and collect a royalty from the Germans after the war. They did not have to manufacture anything; they did not have to go into business."

That would apply only to the product patents, would it not? In other words, royalties at the port can only be collected on product patents; isn't that true?

A. They could be collected on process patents if we could prove the process; but you can not prove the process.

XQ. 721. Then you go on to say:

> "So I conceived the idea of forming the Chemical Foundation and putting all these patents into a quasipublic corporation, which would develop them and give them to chemical companies throughout the country. The way the salvarsan had worked out encouraged us. Mr. Metz was in fear of a monopoly here, he was not afraid of I. G. in Germany. The best answer is the Chemical Foundation. We have licensed six people

to make salvarsan. Mr. Metz is the most successful one. We have given it to Squibbs, and three, I think, altogether."

Now I am a little curious to know who did conceive the idea of The Chemical Foundation. Were you right in that statement or not?

A. I think as it exists now, as to the form of the company, I think I am to blame.

XQ. 722. You claim to be the parent?

A. I do not claim. Mr. Palmer told me to go ahead and get up a scheme which would accomplish what he wanted to accomplish, and between Mr. Choate and myself we worked it out. He says I am to blame.

MR. KRESEL: I did not get that last. He says what?

THE WITNESS: He says I am the one that originally thought of it.

XQ. 723. Who says that?

A. Mr. Choate. But between us it was worked out under Mr. Palmer's direction.

XQ. 724. You, then, are the person who conceived the Chemical Foundation, the defendant here, as we have it?

A. Well, I have explained it. You can——

XQ. 725. I want the answer.

A. The way it happened was that Mr. Palmer told us to get up some plan——

XQ. 726. Hold on; would you mind just answering

A. You can answer it the way—you can say "the scheme of The Chemical Foundation." I invented the name "Chemical Foundation." Mr. Palmer directed Mr. Choate and me to work on the idea.

XQ. 727. Put it this way, then: "So I conceived the idea of forming the Chemical Foundation." Did you conceive it or did somebody else conceive it?

A. Well, I have told you the way it was. I will admit I conceived it, if you will allow the circumstances under which it happened.

XQ. 728. All right. Mr. Garvan, about what time did this idea develop in your mind?

A. You will have to tell me, Colonel, what you mean by "this idea."

XQ. 729. I mean when did it become a definite idea in your mind?

A. The first conversation about it was one or two days after the Bayer sale, between myself and Mr. Palmer. From that time it was an evolution until the time it took its final, present form.

XQ. 730. Your first conversation, you say, was between you and Mr. Palmer. Whom else did you talk to about it?

A. Mr. Choate, Mr. Hoguet, each and every one in the industry that I met from day to day.

XQ. 731. Can you not name some of them?

A. Yes, Mr. Poucher; I know Mr. Wigglesworth, Mr. Merz, Mr. Jeffcott.

XQ. 732. Who was Mr. Jeffcott?

A. Jeffcott was the Calco.

XQ. 733. Calco Chemical Company?

A. Yes. Merz of Heller & Merz.

XQ. 734. What were Mr. Poucher's connections at that time?

A. Poucher was with the duPont Company.

XQ. 735. Yes?

A. Mr. Matheson.

XQ. 736. Whom was he representing?

A. I think we talked it over with Metz. Metz was in and out all the time. Any one of them that was around in New York or that was available. Mr. Cashman of the Grasselli. I do not know who else. Mr. Howard, I think, of the Merrimac, was quite active.

XQ. 737. When did these conversations with the

gentlemen you mention, that you speak of as the industry, begin, and about when did they take place? I know you can not state the exact date, but as near as you can locate it?

A. I would assume not many of them took place before Christmas. That was December 12th, and I went down to Washington shortly after that, and by the time I got back was probably the 20th. So I assume it was not much before Christmas.

XQ. 738. Then that was during January?

A. I would say yes.

XQ. 739. These conversations were going on in regard to the organization of a company to take over all German dye and chemical patents; is that the idea?

A. Yes.

XQ. 740. That was the general idea, to take them all over?

A. Yes.

XQ. 741. Were you present at the conference in Washington on the 27th of January, 1919?

A. I was not.

XQ. 742. Did you read the minutes of that conference?

A. I have.

XQ. 743. Did you read them at that time?

A. I assume so. I have no recollection.

XQ. 744. You were really working on the matter, so you assume you read the minutes; is that right?

A. I assume so.

XQ. 745. Now I am going to get you to identify for me the persons present at that conference as having been down there. Mr. Mansfield Ferry; just say who he was?

A. He was a lawyer connected with the Alien Property Custodian.

XQ. 746. He was general counsel of the Alien Property Custodian, was he not?

A. Whether he was at that time or a little later, I do not know.

XQ. 747. Mr. F. J. Horne?

A. He was Director of the Bureau of Trusts.

By Mr. Kresel:

XQ. 748. Of the Alien Property Custodian?

A. Of the Alien Property Custodian.

By Mr. Anderson:

XQ. 749. Mr. W. T. Gordon?

A. He was the young man in the Patent Division; seen here.

XQ. 750. He was a lawyer?

A. Yes, sir.

XQ. 751. Mr. Joseph H. Choate, Jr.?

A. Mr. Joseph H. Choate, Jr., was the gentleman in the Bureau of Investigation who had charge of the investigation of chemical matters.

XQ. 752. He was associated with your office?

A. Associated with our office.

XQ. 753. Ramsay Hoguet?

A. Ramsay Hoguet was the patent counsel of the Alien Property Custodian's office.

XQ. 754. On the minutes of that meeting, which I hold before me, is the heading: "Committee of American Dyes Institute."

A. Yes.

XQ. 755. Mr. M. R. Poucher. He was the representative of the duPont Company, you said, was he not?

A. One of the representatives of the duPont Company.

XQ. 756. Mr. Henry Wigglesworth. Who was he?

A. One of the representatives of the General Chemical Company.

XQ. 757. The General Chemical Company is a subsidiary of the National Aniline, is it not?

A. No, it is a subsidiary of the Allied.

XQ. 757. (Continued.) Allied Chemical Company?

A. An associate company with the General Chemical.

XQ. 758. August Merz?

A. Heller & Merz.

XQ. 759. They are chemical people?

A. Yes, sir; dye people.

XQ. 760. Dye people, yes. R. C. Jeffcott?

A. Calco Chemical Company.

XQ. 761. B. C Hesse?

A. B. C. Hesse is of the General Chemical Company; chemist.

XQ. 762. F. E. Barrows?

A. F. E. Barrows was a patent lawyer with one of those companies.

XQ. 763. It appears in evidence that he was a patent lawyer of the National Aniline; is that right?

A. That is right.

XQ. 764. C. Protto?

A. He is the technical man for the duPont Production.

XQ. 765. And Judge Laffey?

A. Judge Laffey is the counsel of the duPonts.

XQ. 766. There has been introduced in evidence here a letter from Mr. Hoguet, I think, to Mr. Palmer (I can not put my hand on it), referring to the charter of the Chemical Foundation in course of preparation, which I think was dated the 3d of February, 1919. Do you know anything about the preparation of that charter?

A. No. You mean whether I worked on the charter?

XQ. 767. No; I mean do you know anything about it?

A. I know something in general.

XQ. 768. I mean of your own knowledge, Mr. Garvan, speaking as a witness now.

A. No.

XQ. 769. When you stated this morning that Judge Gray and Judge Ingraham had something to do with it, you were speaking from hearsay?

A. No; I knew Judge Ingraham had something to do with it.

XQ. 770. How did you know that?

A. Because I was in daily touch with him in the New York office.

XQ. 771. So you do know that Judge Ingraham had something to do with the preparation of the charter?

A. But I did not know that he had so much to do with the charter as with the trust agreement.

XQ. 772. The trust agreement was prepared much later, was it not?

A. Not much later.

XQ. 773. Mr. Garvan, do you not know as a matter of fact that that charter was drawn by Mr. Prindle, counsel of the duPont Company?

A. I do not.

XQ. 774. You do not know that?

A. No.

XQ. 775. Had you had any conferences with anybody about the seizure of German patents prior to the sale of the Bayer Company?

A. Yes.

XQ. 776. State with whom?

A. Mr. Choate.

XQ. 777. Anybody else?

A. Not that I remember now. I know I did constantly discuss it with chemical men and with the dye men.

XQ. 778. You did constantly discuss it with the dye men?

A. Yes.

XQ. 779. In one of these books in evidence, to which I will refer if counsel desires, but I can not remember it, either you or Mr. Choate testified and Mr. Palmer states in his report that when the matter was suggested, it was enthusiastically received by the dye industry.

MR. KRESEL: What was suggested?

MR. ANDERSON: The matter of seizing and selling these patents, the plan. Well, I better get the information.

MR. KRESEL: I think you better read what you refer to. I do not recall that statement.

MR. ANDERSON: It will take a little time to find it; there are so many of these papers.

MR. KRESEL: I think I can locate what you have in mind. I think this is what you have reference to, Colonel, page 101. You better read the whole paragraph.

XQ. 779 (Continued.) I will read the whole paragraph as counsel suggests, from the answer, page 101, report of Mr. Palmer:

> "The idea was accordingly conceived that if the German chemical patents could be placed in the hands of any American institution strong enough to protect them, a real obstacle might be opposed to German importation after the war, and at the same time the American industry might be freed from the prohibition enforced by the patents against the manufacture of the most valuable dyestuffs. Accordingly, these considerations were laid before various associations of chemical manufacturers, notably the Dye Institute and the American Manufacturing Chemists' Association. The suggestion was met with an instantaneous and enthusiastic approval, and as a result a corporation has been organized to be known as The Chemical Foundation (Inc.)," and so forth.

That is in accordance with your understanding of the situation, is it?

A. It was always enthusiastically received by the associations, because the little men did not have to pay anything and the patents were there waiting for them.

MR. ANDERSON: I will ask to strike that out.

THE COURT: Let the answer be stricken out and the question repeated.

THE WITNESS: In general, that is true.

XQ. 779. (Continued.) That is your understanding?

A. Yes.

XQ. 780. You said you had discussions constantly prior to the sale of the Bayer Company, with various representatives of the industry, about seizing these German patents. Could you name some of those?

A. No, I could not, because I cannot remember specific discussions. All I can remember is that Mr. Choate was constantly discussing the importance of these patents to our work for developing a general organic industry.

XQ. 781. You speak of your work for developing a general organic industry.

A. Yes.

XQ. 782. Would you define more definitely what you mean by that?

A. Why, we very early realized that organic chemistry in general depends for its progress upon having a complete dye industry, because that is the graduating school for organic chemists. They learn more organic chemistry in a dye factory in one year than they would learn in any other business in their natural lives, because it is so much more used.

After seeing the power and the position that these Germans held over us here, we were enthusiastic for freeing this country from that dependence which it had been suffering under. No one could help being, to

read the literature and the correspondence and go through daily what we were going through in our experience with them.

XQ. 783. And the thing that you were working for was the development of an organic chemical industry in this country?

A. No, that was only the means to the end. The end was to free this country from the yoke of the Germans.

XQ. 784. First you wanted to free the country from the yoke of the Germans, and then what followed that as your next step?

A. Then freedom for all of us and safety for our people and the development of medicine under a civilized people.

XQ. 785. And you wanted to develop the organic chemistry in the hands of the civilized people?

A. I did.

XQ. 786. And your idea of the way to do that—I want to get your outlook on the situation——

A. Certainly.

XQ. 786. (Continuing.)—was to seize these German patents and turn them over to such a corporation as the Chemical Foundation, Inc.; is that the idea?

A. To seize these German patents and to put them in such a position that every American would get a chance to develop them free from the power of constraint or restraint by Germany.

XQ. 787. And that was the subject matter and aim and object of your conferences with the dyestuffs people in January and preceding that, the time you have spoken of, your various talks and so forth?

A. Absolutely.

XQ. 788. That was your object?

A. Absolutely.

XQ. 789. And that was your object in conceiving and directing, in co-operation with Mr. Palmer, of

course, the organization of the Chemical Foundation, Inc.?

A. Yes, sir.

XQ. 790. And that was your object in seizing and selling these patents to the Chemical Foundation, Inc.?

A. Yes, sir.

XQ. 791. Now, Mr. Garvan, I read you from your testimony awhile since, and I will not repeat it unless you desire it—if you do, I will—the statement that the sale of these patents was consummated on the 10th day of April, 1919. Was that statement correct?

A. The sale was completed before I went in there. If you call the signing of the assignment the consummation, it is. But I regarded the contract as made before I became Alien Property Custodian.

XQ. 792. Mr. Garvan, you are a lawyer, are you not?

A. Yes.

XQ. 793. Don't you know that the Government of the United States can not, and no officer of the United States can, make a verbal contract binding upon the Government?

A. No, I do not know that.

XQ. 794. You did not know that?

A. No.

XQ. 795. Who made the contract for the sale of these patents?

A. A. Mitchell Palmer.

XQ. 796. Who represented the Chemical Foundation in the negotiation?

A. The committee of the Dyes Institute and the other chemical companies that were then in New York.

XQ. 797. Name them, please.

A. I would say Mr. Merz, Mr. Poucher, Mr. Jeffcott, Mr. Wigglesworth—I don't know—and whoever they represented.

XQ. 798. You have identified these gentlemen, as

to who they represented. They are the same gentlemen that you identified just now as representing certain dyestuff companies?

A. No, no, no. They were the committee acting for the American chemical industry and——

XQ. 799. A committee of what organization?

MR. KRESEL: You both talk at the same time. Won't you please let him finish, Colonel?

MR. ANDERSON: I will with the greatest pleasure if he will do me the equal favor of just stopping when he has responded to my question. I know he wants to.

XQ. 800. I am not being unpleasant about it, Mr. Garvan; I am trying to be as pleasant as I can. They were a committee of what organization?

A. Of both the manufacturing chemists' organization and of the Dyes Institute and of any other chemical industries that wished to join with them.

XQ. 801. I believe you testified this morning that you had a conference with these gentlemen in your office in New York, did you not?

A. Well, there were fifteen or twenty at that conference. Those I can not remember.

XQ. 802. You can not remember all of them?

A. No.

XQ. 803. And you said at that conference they made a proposition to buy all these patents at $250,000?

A. There was general discussion about Mr. Palmer's proposition. I do not say they. I did not say they made the proposition.

XQ. 804. I beg your pardon.

A. If they made the proposition, it was a counter-proposition to ours. We were the ones who called them there and put the proposition to them.

XQ. 805. Will you watch my question and just answer it?

A. Certainly.

XQ. 806. Because I do not want to move to strike out. You testified this morning that you had this conference with these gentlemen?

A. Which conference are you talking about?

XQ. 807. I am speaking of a conference at Forty-second Street, New York.

A. Yes.

XQ. 808. And that they made a proposition of $250,000, and you went down to Mr. Palmer and communicated it to him, and that he said it was satisfactory, and you went back and advised them that it was satisfactory?

A. That is true.

XQ. 809. Was that right?

A. Yes.

XQ. 810. Who were the "they" that made that proposition?

A. All this whole group.

XQ. 811. Who specifically spoke for them in making the proposition?

A. I can not tell you that.

XQ. 812. Whom did you represent in that deal?

A. I represented the Alien Property Custodian.

XQ. 813. That was before the organization of the Chemical Foundation, was it?

A. I think so. I think it was.

XQ. 814. Was it prior to the fifteenth day of February, 1919?

A. It was about that time. I would not be able to say.

XQ. 815. Have you any minutes of that meeting?

A. No.

XQ. 816. Or any letters or memoranda on the subject?

A. No.

XQ. 817. Nothing at all?

A. No.

XQ. 818. Mr. Garvan, you have testified in this matter and been asked about the organization of the Chemical Foundation and the sale of these patents no less than four or five times, I think you said, have you not?

A. Three times.

XQ. 819. Three times?

A. I think that is all.

XQ. 820. You have been very closely questioned about the whole transaction, have you not?

A. Yes, sir.

XQ. 821. Can you now or can you before the close of this case go through your testimony and point to any place where you have ever mentioned that there was any such conference, any such proposition made or any such transaction as you have indicated in your evidence this morning?

A. My testimony is there.

XQ. 822. Well, are you willing to admit that there is no reference to any such thing?

A. No, I am not any such thing.

XQ. 823. Then will you look up and see if you can find any such reference, and let me have it?

A. I certainly will.

XQ. 824. Then you regarded this sale as completely consummated prior to the 16th day of February, 1919?

A. If you will tell me what you mean by "consummated."

XQ. 825. I am asking you. You have used the expression.

A. The facts are there. The bargain was made and closed before I became Alien Property Custodian.

XQ. 826. How many patents did you sell?

A. Whatever there were; whatever the search

would reveal in the Patent Office, relating to the upbuilding of an organic chemical industry.

XQ. 827. No matter what there were?

A. No matter what there were.

XQ. 828. At that time the search had just been begun, really, had it not?

A. I did not have charge of the search. I could not tell you just how far it had progressed.

XQ. 829. You did not know how far it had progressed?

A. No.

XQ. 830. You had no idea how many patents would be involved in the sale?

A. Well, we had a general idea.

XQ. 831. How did you get the general idea if you had not made a search?

A. I think from the list of the Federal Trade Commission.

XQ. 832. You had a list of the Federal Trade Commission?

A. Yes, I think so.

XQ. 833. But you used whatever there was?

A. Whatever there was.

XQ. 834. And whatever the search might develop?

A. Yes.

XQ. 835. As relating to the chemical and dyestuffs industry of the United States, you sold in a lump sum, for the sum of $250,000 at that time?

A. Yes.

XQ. 836. And you agreed to do it at a private sale?

A. Yes, sir.

XQ. 837. And that was agreed to at this conference in New York?

A. Yes, sir.

XQ. 838. How did you arrive at the price of $250,000?

A. By discussion of all the elements involved.

XQ. 839. Tell us some of them.

A. Well, in the first place there was the fact that none of these patents carried any know-how with them, that unless——

XQ. 840. Let us take up that one. That is the first one.

A. Wait a minute.

XQ. 841. No, hold on, I want you to tell one at a time, and then you can take the next one.

A. Can I not finish the answer?

THE COURT: Has he finished the answer to your question?

MR. ANDERSON: No. I will withdraw the question and put it this way:

XQ. 842. Tell us one of the considerations that was discussed?

A. The fact that the patents were worthless unless some business concerns put up the money to build a plant and make the research to find out how to work them.

XQ. 843. I see.

A. That of themselves they would not help you —but very little.

XQ. 844. Who suggested that idea?

A. I think we all recognized that idea—our own reading and studying and experience.

XQ. 845. You are not a patent expert, are you?

A. No.

XQ. 846. Mr. Choate had never been a patent expert before he studied this subject?

A. No.

XQ. 847. Can't you suggest who raised the question of their being in that situation—the patents?

A. I think we all raised that.

XQ. 848. You all raised it?

A. Yes, everybody knew that.

XQ. 849. Well, that is one thing that you all agreed on?

A. Yes.

XQ. 850. How about those licenses by the Federal Trade Commission?

A. None of them had been worked, except that they had been re-discovered.

XQ. 851. As a matter of fact, were they not then yielding royalties?

A. Yes, but there had been hundreds and hundreds of thousands of dollars spent on finding out how to work them. Look up how much the Government spent on salvarsan, take how much the Schambergs spent, take Metz going to Europe for four months and getting the know-how and could not do it when he came back.

XQ. 852. Yet the fact was there were 128 of those patents, of the most important of them, or more important of them, licensed, and then producing revenue under the Federal Trade Commission licenses, and being used in the United States; is that not true?

A. I do not know how many were being used or how many were being licensed.

XQ. 853. Did you take any trouble to find out how many were being licensed?

A. I knew there were a number of them licensed, and I know nine out of ten of those licenses were not——

XQ. 854. You knew a number of them were licensed?

A. Yes.

XQ. 855. Then just stop there. Did you take the trouble to find out what was the revenue being yielded by those licenses under the Federal Trade Commission?

A. No, I did not.

XQ. 856. You did not?

A. No, I did not.

XQ. 857. You did not refer to it. Was it not true also that some considerable number of those patents were then being employed in industry in the United States under contracts which had been seized by the Alien Property Custodian and were then in his possession?

A. I think there were some of those.

XQ. 858. Did you take the trouble to find out what these contracts were yielding in the way of payments, licenses or revenues?

A. I did not. I was not in charge of the Alien Property Custodian's office in Washington.

XQ. 859. I know, but did you take the trouble to find out?

A. No.

XQ. 860. So much for the know-how. Tell us what was the next consideration you discussed; just take one.

A. The next one was that we had to give non-exclusive licenses to everybody, whether he was a stockholder or not in the corporation.

XQ. 861. You had to give non-exclusive licenses?

A. To everybody. That is, every American citizen.

XQ. 862. You had to give non-exclusive licenses to every American citizen?

A. Yes, sir.

XQ. 863. I will ask you was this point discussed, that under non-exclusive licenses at a reasonable royalty the license income from the patents might be increased instead of decreased; was that considered?

A. No, sir.

XQ. 864. That was not considered at all?

A. No, sir.

XQ. 865. Nobody made that suggestion?

A. No, sir. It would have been talked down if they had, certainly. There was a very limited consumption of dyes in the country. Now, just as quick as you make non-exclusive licenses you divide up a limited market. You are talking about an unlimited market where you can increase the consumption, but you can only increase the consumption in America practically in proportion as the population increases.

XQ. 866. Has not America a very considerable export trade?

A. Since Germany got free she had none until the occupation of the Ruhr. Germany cut it off like that (gesturing).

XQ. 867. Do you mean to say America had no export textile trade at the time?

A. I thought you meant dye and chemical trade.

XQ. 868. Does not dye go into the textile business?

A. Oh, yes.

XQ. 869. And therefore the export trade would be considered as well as the domestic trade as affecting the market for dyes in America, would it not?

A. No, not the export of textiles.

XQ. 870. It would not be at all?

A. No. Our export of textiles is very small.

XQ. 871. Do you know what our export of textiles is in value per annum?

A. No, but I do not believe it is very large.

XQ. 872. But you did not consider that element at all, did you?

A. No, no.

XQ. 873. What is the next element you considered in arriving at the value of these patents?

A. That nobody who was going to put their money in could get more than six per cent. on it.

XQ. 874. I understood that the main purpose here was the development of American industry?

A. It was.

XQ. 875. For patriotic purposes?

A. It was.

XQ. 876. And the people who underwrote this scheme were all interested in that industry, were they not?

A. No, sir. Who underwrote it? Yes, sir.

XQ. 877. That is what I thought.

A. I beg your pardon. I thought you meant stockholders.

XQ. 878. They all underwrote it and they were interested in the development of the industry and that was the purpose you all had in view, was it not?

A. Yes, sir.

XQ. 879. So that they would not invest their money in the development of their own industry on a a six per cent. basis; you thought that was a very serious handicap to this business?

A. Why, certainly; nobody goes into business on that basis.

XQ. 880. What was the next consideration that influenced you in fixing the value?

A. Well, that you had to give a license to the Government.

XQ. 881. Did you have to give a license to the Government?

A. We did.

XQ. 882. Absolutely obligated to give a license to the Government?

A. Absolutely obligated to give a license to the Government.

XQ. 883. And you agreed to this price?

A. There were other elements, I think.

XQ. 884. Well, take up the next one. Let us take the next one.

A. They had to trustee their stock for seventeen years.

XQ. 885. All their stock?

A. Yes.

XQ. 886. Or only their common stock?

A. Well, common stock.

XQ. 887. Now, is there any other consideration that entered into fixing this price?

A. Those are the main ones.

XQ. 888. Those are all that you can now recall?

A. Yes.

XQ. 889. And the Chemical Foundation was incorporated in accordance with the agreement thus made, was it?

A. Yes, sir.

XQ. 890. And you embodied the agreement that you made in the charter of the Chemical Foundation to the end that it would be a contract binding on the company and on everybody, was that the idea?

A. Yes, sir.

XQ. 891. And the price that you fixed, or that you and Mr. Palmer fixed for these patents, was founded upon the ideas and the purposes and the provisions which were then embodied in this charter; is that not true?

Mr. Kresel: Colonel, please don't say that he fixed it.

A. I don't know whether all those things are specifically embodied in the charter. The charter speaks for itself. I can not right now carry in my mind everything that is in the charter.

XQ. 892. Very good. I will let it speak for itself. That charter was in course of preparation by Mr. Hoguet; don't you know that?

A. No, I think Mr. Choate had more to do with that charter than anybody.

XQ. 893. Mr. Choate?

A. I think so.

XQ. 894. Mr. Garvan, do you not recall that Mr.

Choate testified before one of the committees in your presence that he had nothing to do with it?

A. No, I don't remember that. I don't think he testified to that.

XQ. 895. I will not stop to get it now, because I do not think it is material. After you had these negotiations that you have described to sell all these patents and you reported to Mr. Palmer and reported back to them that it was agreeable to everybody, what was your next connection with this matter?

A. I do not understand what you mean.

XQ. 896. I mean, what did you do next about it after that conference about the 15th of February that you state was held and when you say there was an agreement made; what did you do then?

A. I do not know what I did then.

XQ. 897. You do not remember what you did then? Well, you remember that you were elected a director of the corporation on the third day of March, 1919, do you not?

A. Yes, I think so.

XQ. 898. That was the day before you became Alien Property Custodian?

A. Yes, the incorporators met here that day.

XQ. 899. You do remember that the corporation was incorporated on the 19th day of February, 1919?

A. Yes, sir.

XQ. 900. You do remember that you became Alien Property Custodian on the 4th. You have testified to that?

A. Yes.

XQ. 901. And that on the 8th you became president of the Chemical Foundation by a formal election, did you not?

A. I knew we were elected directors on the 8th and I guess they did have a meeting on the same day and elected the officers. I think so.

XQ. 902. And you do remember that on t
8th——

A. I meant that we qualified as directors. W
were elected on the 3d.

XQ. 903. You do remember that at the same ti
Mr. Choate was appointed general counsel of this co
pany, do you not?

A. Well, it was at that meeting or very shor
after. I don't know.

XQ. 904. If the minutes show at that meetin
that is correct?

A. Whatever it is.

XQ. 905. And that Mr. Hoguet was appoint
patent counsel for the Chemical Foundation?

A. Yes, sir.

XQ. 906. That Mr. Corbett became the secreta
at that time?

A. Secretary and treasurer, I think.

XQ. 907. Mr. Corbett had been vice-president
the Central Union Trust Company?

A. Was then.

XQ. 908. And Colonel Douglas I. McKay becam
the vice-president of the Chemical Foundation?

A. Yes, sir.

XQ. 909. And you do remember that on the 10
day of April you conveyed the patents described
the first and large assignment here and other righ
to the Chemical Foundation and at that time you we
president, were you not?

A. Yes, sir.

THE COURT: Do counsel want to go on f
another hour, or do you want to stop now?

MR. ANDERSON: If your Honor please, if it
agreeable to counsel, I would like to stop becau
I have been suffering intensely with a headac
all day.

MR. KRESEL: I have no objection, your Honor. I am quite willing.

THE COURT: We will renew the proceedings in this case on Thursday morning at 8.30 Standard time.

(Whereupon, at 3.00 o'clock P. M., an adjournment was taken until Thursday, July 5, 1923, at 8.30 o'clock A. M. Eastern Standard time.)

TWENTY-FIRST DAY.

Wilmington, Delaware,
July 5, 1923, at 8.30 o'clock A. M.
Standard Time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

FRANCIS P. GARVAN resumed the stand.

CROSS-EXAMINATION (Continued).

By MR. ANDERSON:

XQ. 910. Mr. Garvan, at the time of adjournment on Tuesday, I had been asking you as to the circumstances surrounding the original sale of patents and the organization of The Chemical Foundation. There are one or two questions that I would like to ask this morning as to another phase which I had practically covered. You recall that I asked you as to the investigations and reports on the properties of the Badische Company, the Farbwerke-Hoechst Company, Cassella Color Company, and various other companies which I

named and are mentioned in the part of Mr. Palmer's report filed as an exhibit with the answer in this case?

A. Yes, sir.

XQ. 911. I do not recall whether you testified or not as to whether all these properties were seized by the Alien Property Custodian prior to his report in February, 1919. Do you recall

A. Badische, Hoechst?

XQ. 912. Cassella?

A. Cassella.

XQ. 913. Kalle Color Company?

A. It would be my impression that they were.

XQ. 914. They were all seized. As I understood, none of these companies had any property or plant in the United States with the exception of the Bayer and possibly the Roessler-Hasslacher Company.

A. Oh, the Roessler-Hasslacher Company had big plants.

XQ. 915. I mean, the Bayer Company and the Roessler-Hasslacher Company had plants; the others were merely selling agencies?

A. Selling agencies.

XQ. 916. And distributing agencies for the German manufacturers?

A. Of course, Mr. Metz had some other companies in which he was interested.

XQ. 917. Yes; but the Farbwerke-Hoechst was merely making salvarsan?

A. There were four or five of those companies, Colonel. That company, I think, was making salvarsan.

XQ. 918. Yes; I want to get that straight.

A. I think that is so. I am not sure whether it was being made under that name or the Metz Laboratories. I am not positive.

XQ. 919. Subject to the possible modification as

to Mr. Metz's plants, as to which I think he testified, with the exception of Bayer and Roessler-Hasslacher, those institutions were merely agencies, either individuals, partnerships, or domestic corporations, acting as agencies for the German firms in the selling of their products; is that true?

A. Yes.

XQ. 920. The Kuttroff-Pickhardt Company was the agent of the Badische Company, was it not?

A. Yes, sir.

XQ. 921. And they were large importers of dyestuffs, were they not?

A. Very large, yes.

XQ. 922. And also of medicinal and pharmaceutical properties, were they not?

A. I am not sure how far the Badische Company went into the medicinals. Not very far, I don't think. They may have, but I don't think so. The Bayer was the principal medicinal concern.

XQ. 923. But they were not manufacturers in any sense in this country?

A. No, sir.

XQ. 924. On Tuesday, I also asked you in regard to the method of making up reports, appraisals, advertisements and sales of these properties seized by the Alien Property Custodian and you referred to the prospectus of the Bayer Company as an illustration of the method of sale. Can you identify that as one of the prospectuses of the Bayer Company?

A. Yes.

XQ. 925. And that, with such changes as were necessary to suit the individual case, was the usual method of selling these German properties?

A. Yes, sir.

MR. ANDERSON: I would like to offer in evidence a paper which the witness has identified, being a prospectus for the sale of the stock of the

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Bayer Company, Inc., and the Synthetic Patents Company, omitting from the document the photographs contained in the center thereof, to be identified as Plaintiff's Exhibit 612.

MR. KRESEL: No objection to that.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 612." (*See Exhibits, Vol. III, page 1449.*)

XQ. 926. Mr. Garvan, you stated that you personally appeared before the Advisory Sales Committee, as the record shows here, on the 14th of February, 1919, and presented to them the matter of the proposed sale of the German patents and trademarks through the organization of the Chemical Foundation, as described in this record?

A. Yes, sir.

XQ. 927. I would like you to state as clearly as you can just what you said to the Advisory Sales Committee?

A. Of course, it is very difficult for me. I will give you the substance of it. I have no record of what I said.

XQ. 928. As far as you can?

A. My recollection is that I told them—just preliminary to that, Colonel, I probably did not tell them so much about the Bayer. They were already familiar with it. The Bayer had passed through their hands, don't you see; had been sold and passed upon by them. The same may have been true of other companies, so I can not tell to what extent I went into the past history.

But I did explain our situation in the country in reference to organic chemistry and I did explain to them that the taking over of these patents was essential to insure freedom of that industry, which had been

created by the war, of developing it to the extent where it would be able to protect itself in case of war.

XQ. 929. Would you mind me interrupting you? What do you mean by taking over?

A. I did not mean to say in case of war. I will strike that out.

XQ. 930. Do you mind my interrupting you to ask what you mean by "taking over"?

A. Of selling these patents, getting them into American hands, taking them from the Germans and putting them into American possession.

XQ. 931. All right, proceed.

A. I explained to them what it meant to our industries, what it meant to our National Defense and what it meant to our progress in medicine, and I stated to them that we had gone to the industry and asked the industry if they would get all elements together and become the purchaser of these patents under the terms and conditions which Mr. Palmer felt it necessary to lay down for the protection of the country; that I had done so and that they were willing to work along with us. I told them that we had discussed price with them, and I am not positive whether we had definitely come to our agreement as to the price, but that $250,000 seemed to be the price which was the nearest we could get at, what they were worth sold under those conditions and what the industry in view of the fact that they would have to put up more capital and defend them would be willing to raise.

I said the whole thing was dependent upon their willingness to become trustees, that the responsibility would be with them, there would have to be a non-profit making thing and a thing of which they would assume the responsibility. That is as near as I can remember. You must remember I was in daily conference with this committee.

XQ. 932. What committee?

A. The Advisory Sales Committee, Judge Ingraham and Mr. Bannard and Mr. Dodge, but more Judge Ingraham than Mr. Bannard, were in constant communication. They gave up practically their whole time, particularly Mr. Bannard, to that war work. So that whether all the conversation was in the committee or afterwards, I do not know that they recommended that Judge Ingraham be asked to take care of the Trust Agreement and the responsibilities which they were to assume, and from that time on with us, they have of course been working.

XQ. 933. Then you had discussed the price of $250,000 prior to your meeting with the representatives of the industry on the 15th or 16th which you described on Tuesday?

A. Oh, yes, the price was discussed at all times.

XQ. 934. Can you remember when the price was first discussed?

A. No, I can not.

XQ. 935. Do you recall the minutes of the Executive Committee of the Dyes Institute, held on the 7th of February?

A. I read them before this trial started, but I have not read them since.

XQ. 936. Do you recall that in that report it was stated that Mr. Hoguet had suggested the price of $250,000?

A. I don't remember that, no. I would want to refresh my recollection on that.

XQ. 936a. Mr. Garvan, could you say who first suggested a price for these patents?

A. No, I could not.

XQ. 937. Could you say when the price was first suggested?

A. No, I could not say that.

XQ. 938. But the $250,000 figure was discussed prior to the 14th of February?

A. Yes, I am quite sure.

XQ. 939. You told us the conditions which were discussed as surrounding this sale at your conference with the members of the industry on about the 15th or 16th, at your office in New York, but you did not tell us how the price of $250,000 was arrived at. Could you tell me that?

A. That was arrived at out of the general negotiations.

XQ. 940. I know; but there must have been some way that $250,000 was fixed as distinguished from $100,000 or $500,000. Now, could you tell me how you fixed the sum of $250,000?

A. I think that that was the largest sum that we could get and the least we would accept, like all negotiations as to price.

XQ. 941. What were the elements that entered into it?

A. The elements that entered into it were, first, that the biggest companies already had a license from the Federal Trade Commission on the patents which they had found that they needed up to that time. The patents had been on the shelf for a year and a quarter, and both the bigger companies and some of the smaller companies had taken out licenses on all the patents that they knew about, that they felt they were going to use at that time. That was one of them.

XQ. 942. Who stated that fact?

A. Both the National and the duPonts stated that, that they had these licenses. That is only one, if you want me to finish my answer.

XQ. 943. Yes, all right.

A. Then, of course, there was the fact that with these patents there came no knowledge of how to work

them. They had already been, or at least some of them had been long enough in the dye business to know——

XQ. 944. What they knew is not material. It is what they said.

A. Well, they said what they knew.

XQ. 945. All right.

A. That they had already been spending enormous amounts to discover how to make these vat dyes and these colors for which they had a license from the Federal Trade Commission and had been able to get nowhere so far.

XQ. 946. They had spent very large sums?

A. Very large sums of money.

MR. KRESEL: Wait a minute.

XQ. 947. When you said "they," whom did you mean?

MR. KRESEL: Pardon me, Colonel. Had you finished your answer, Mr. Garvan?

THE WITNESS: Yes.

A. The Newport, Sherwin-Williams, Calco, du-Ponts, National Aniline.

XQ. 948. They had spent large sums in developing the dye business?

A. Well, in research, attempting to develop, yes, sir.

XQ. 949. At that time the dye business was quite large in the United States, was it not, 1919?

A. It was large in bulk, but it had not reached the point of development——

XQ. 950. Now, Mr. Garvan, one minute.

A. I haven't answered yet.

XQ. 951. I know you do not want to go beyond the question. You said the dye business in the United States was quite large.

A. Oh, yes, sir.

XQ. 952. That is all.

A. But I have not answered your prior question as to all the elements that went into that.

XQ. 953. I thought you said you had.

A. No, sir.

XQ. 954. Then go ahead.

A. Then the element, as I have said before, the element of the non-exclusive character of the licenses. The dye business of the country in 1913 had only been $10,000,000 in imports; probably sold in this country for $25,000,000. With the increase of prices in the war and the increased consumption by our soldiers of the uniform colors, the solid colors, it perhaps had grown to $60,000,000. But the most you could figure on as the normal gross dye business in the country was forty millions of dollars; and that if you granted non-exclusive licenses and it reached the point where two or three could make these dyes, why, the profit in it would be very small.

If it was an exclusive license and they would have control of all that America used of that patented product yes, you could discuss a price, but——

XQ. 955. Then the profit in it would be very large?

A. It would be large as long as they were able to—whatever they could force out of the people, don't you see?

Then there was the feature of the license to the Government, and then there was the feature that these patented dyes were in direct competition with the Swiss vat dyes. They were in direct competition with the algol colors that we had sold under the Bayer; and that none of the business would be of any value unless Congress looked favorably upon legislation to protect us from imports. England was developing a big dye industry protected by her own Government and the money put in by her Government, and unless we had a tariff in the future, Switzerland or England

or the Bayer Company were three possible rivals of the production under the vat colors. So that all those things were gone into by the hour.

XQ. 956. But prior to that time that you had gone into it by the hour, you had discussed the price of $250,000?

A. Well, simultaneously, at our meetings.

XQ. 957. I thought prior to the 14th you discussed——

A. Oh, yes, but we discussed also all these other things, Mr. Choate and I, for a year probably.

XQ. 958. For a year?

A. For a year, since the early part of 1918. Mr. Choate fully realized the relation of the patents to the industry.

XQ. 959. I see.

A. And had been trying to induce me to get Mr. Palmer to do something about it.

XQ. 960. So that, did you consider at all the cost to the persons who took out these patents of the patents?

A. How do you mean, the cost?

XQ. 961. I mean the cost of getting the patents.

A. You mean their research or their cost under the Revenue Act?

XQ. 962. Their research or other cost of getting out the patents; did you consider that?

A. You mean their revenue cost, or how much it cost—yes, we did. We considered that in line with the fact of how they had obtained the passage of the——

XQ. 963. I asked you the simple question: did you consider that question?

A. Certainly.

XQ. 964. Did you ascertain what the cost was of getting these patents out from the Patent Office?

A. We knew generally about what a patent cost, $30 or $40.

XQ. 965. Did you not know that at the conference on the 27th with the Alien Property Custodian's representatives in Washington, Mr. Barrows of the National Aniline had stated that the average cost was about $100?

A. No. I probably did at the time. I mean, I do not recall it now.

XQ. 966. And you estimated the cost at about thirty or forty dollars?

A. No, that is the filing fee.

XQ. 967. Did you not know that the filing fees and expenses in the Patent Office itself were around thirty-five dollars?

A. That is what I said. That is what I thought was about the cost. I only know that from the merest hearsay.

XQ. 968. Was that not discussed at this conference?

A. I assume it was. Mr. Hoguet was the man who was familiar with those details. That was my impression, that it was thirty-five dollars. I must have gotten it from Mr. Hoguet or from somebody who knew.

XQ. 969. Did you not know as a matter of fact that usually there were attorney's fees, printing expenses and other expenses in addition to fees in connection with getting these patents out?

A. Oh, yes.

XQ. 970. You did know that?

A. Oh, yes.

XQ. 971. I believe you put in some figures here which showed that the cost of these patents, trademarks, and so forth, which you called "properties," which you took over, was an average of about——

A. I think it was $40 or $41.35.

XQ. 972. You subsequently sold a number of other patents and you fixed in your assignments a regular price of $50 each, did you not?

A. In the assignments?

XQ. 973. In the subsequent assignments.

A. Yes, sir. Not all of them were fixed that way, Colonel.

XQ. 974. I am talking about the sales to the Foundation.

A. Yes. I do not think all of them were. Some of them will bear that rate. Those that were sold at the request of the Navy, I think some of them bear less.

XQ. 975. How did you arrive at the price of $50 each for the subsequent patents that were sold?

A. That was arrived at by averaging in our head generally what we had paid for the first ones. As a matter of fact, we should not have given any consideration for those subsequent ones because the original price was supposed to have included all of the patents that were essential for the purposes of the creation of the Foundation.

XQ. 976. And you did seize and sell all the dye and chemical patents enemy-owned so far as you could discover them up to the time of your retirement from office?

A. Yes, sir.

XQ. 977. I believe you stated on your direct testimony that you had testified three times before Committees of Congress?

A. Yes, sir.

XQ. 978. You testified once before the House Committee?

A. The House Ways and Means Committee.

XQ. 979. Considering the tariff bill for import duties and dye embargo?

A. Yes, sir.

XQ. 980. You testified once before the Senate Committee considering substantially the same legislation?

A. Yes, sir.

XQ. 981. In 1919, did you not?

A. Yes, sir.

XQ. 982. You testified again before the sub-committee of the Judiciary investigating the alleged dye monopoly n 1922?

A. Yes, sir.

XQ. 983. In all of those hearings you were very closely questioned as to this transaction, were you not?

A. I think so. I think that is a fair statement.

XQ. 984. You were also questioned in those hearings as to the negotiations and the method of arriving at the price, were you not?

A. No, I was not.

XQ. 985. Did they not ask you a good many times about that?

A. They asked me in general to state how the Foundation was formed.

XQ. 986. Did they not ask you how you arrived at the price?

A. I am not sure as to that. I think Mr. Choate was the one who testified mainly about the formation of the Foundation

XQ. 987. I asked you on Tuesday if you would go over your evidence at those hearings and point out to me any place where you have ever mentioned the conference between yourself and the Dyestuffs representatives, as to which you have testified as having taken place on or about February 15th or 16th, 1919. Have you been able to find any such evidence?

A. I don't think that was quite your question. As I remembered it—I did not have the testimony away with me over the 4th of July—I understood your question was whether I testified about this transaction hav-

ing taken place before I went out as Alien Property Custodian.

XQ. 988. Before you went in as Alien Property Custodian?

A. That is what I mean, yes. I find that I did so state.

XQ. 989. Where?

A. I find that Mr. Choate so stated.

XQ. 990. I am not asking you about Mr. Choate's evidence, I am asking about yours.

A. In the first place, I so stated——

XQ. 991. Will you state where you gave that testimony?

A. I can not look it up now; I will look it up during the day and point it out to you.

XQ. 992. I would very much like to see it. But you can not point now to any place where you testified with reference to the conference that you mentioned as having taken place about February 15th or 16th, 1919?

A. That I would have to look up. If I was asked, I certainly did. I do not know that I was asked.

XQ. 993. In your testimony before the sub-committee of the Committee on the Judiciary, on Senate Resolution No. 77, you gave the following evidence, which was taken under oath——

MR. KRESEL: What page was this?

MR. ANDERSON: At page 392.

XQ. 993. (Continued.) "In order to fix it in the record, when did you become Alien Property Custodian?

"Mr. Garvan. March 4, 1919.

"The Chairman. When was the sale made to the Chemical Foundation?

"Mr. Garvan. The order directing the sale was made February 26, 1919, and the sale was actually consummated April 10, 1919.

"The Chairman. And you became the President of the Chemical Foundation when?

"Mr. Garvan. I was the President from the beginning. The date of the recordation of our certificate is the 19th of February, 1919. So that I was President of the Chemical Foundation at a time when I was a dollar-a-year man in the employ of the Government, but when I had no expectation of doing anything but step out and go back and devote myself to my private practice and thus build up, if possible, the chemical industry in this country.

"The Chairman. You may go on with your statement.

"Mr. Garvan. The question of the compensation to be paid for those patents to the Chemical Foundation was, of course, the arbitrary fixing of a sum or sums. We had to take into consideration the fact that the patents were valueless as they stood, with the single possible exception of one or two, and even those were valueless unless capital should be invested in them. Furthermore, we must understand that the condition was made that they were sold to the Chemical Foundation only in trust; that is, that they must license each and every American manufacturer who cared to use a license for any of them, and that no exclusive license should be granted. In other words, we have to grant 10 licenses on each patent if there are 10 applicants, which, of course, is a simple proposition. If you were to put that proposition in a patent and then put that patent up and offer it for sale you could not get five cents for it."

You testified under oath to that effect, did you not?

A. Yes, sir.

XQ. 994. You stated on Tuesday on direct, I think, that a proposition and counter-proposition were made at this conference—that Mr. Palmer made a proposition and the industry made you a counter-

proposition. What was Mr. Palmer's proposition and what was the counter-proposition?

A. Mr. Palmer's proposition was that the—I stated it so many times—it stated that the patents should be sold under the condition that everybody should get a license, a non-exclusive license, with equal rights; that a license should be given to the Government; that the stock should be trusteed for the longest life of the patent, and so forth and so on.

Their first counter-proposition, as I remember it now, was that some one of their people or someone whom they should name should be the trustee and that when the license fees had repaid the purchase price, their licenses then should be free. Those are the two or three last things that I remember were discussed between us.

XQ. 995. There was no proposition or counter-proposition as to price?

A. Well, no, the price was a development of the conversation between us from the beginning. I do not know when the price was settled.

XQ. 996. You also took over a number of pending applications for patents, did you not?

A. Yes, sir.

XQ. 997. Do you remember how many?

A. No, I do not. I can look it up and tell you.

MR. KRESEL: That is all in evidence, Colonel.

MR. ANDERSON: It is already in evidence.

XQ. 998. Have you since perfected those applications into patents?

A. Some have been perfected, some abandoned, and some still pending.

XQ. 999. Do the statments put in show the number which have been perfected into patents?

MR. KRESEL: Yes.

A. I am certain it does. If it does not we will put it in. We had it here. They are included in the total

number quoted by me in my testimony—those which have been perfected.

XQ. 1000. Mr. Garvan, was it your view that the Alien Property Custodian, representing the Government, had the right to seize these patents and turn them over to the industry of the United States at approximately the Patent Office fees for obtaining the patents?

A. I beg your pardon. I did not understand.

(XQ. 1000 repeated as above recorded.)

A. If the President so determined.

XQ. 1001. That was your view?

A. Certainly. I always felt he had a right to seize long before the amendment of 1918.

XQ. 1002. On your direct testimony your counsel read from the Hearings on Bill H. R. 2706, page 360, certain parts of your testimony. Further down on the same page I find this question asked by Mr. Green of the Committee:

> "And you consider it entirely ethical that having obtained information through their connection with the Alien Property Custodian's office that they shall then sell to an institution controlled by themselves?
>
> "Mr. Garvan. Why, Mr. Green, it was by virtue of our connection with the Alien Property Custodian's office that we saw it as our public duty not to let this thing revert to where it was, and everything we have done since has been because of what all of us saw was threatening America and because we saw the situation which had been hanging over America before the war, and it was in our endeavor to use that information for the benefit of the American people that we assumed the burden of carrying on this fight."

You did so testify, did you not?

A. I did.

XQ. 1003. You did testify to that?

A. Yes.

XQ. 1004. In the hearing before the Senate Committee on Finance, on H. R. 8078, page 521, the record discloses the following testimony:

"SENATOR CALDER. How many patents did they take over?

"MR. GARVAN. Four thousand.

"SENATOR CALDER. The Alien Property Custodian sold them these patents?

"MR. GARVAN. It was by private sale by the President.

"SENATOR CALDER. For how much money?

"MR. GARVAN: Two hundred fifty thousand dollars.

"SENATOR CALDER. Will these patents be of any great value some day?

"MR GARVAN. They may or may not. They would be to any person who was going to try to make money out of them. For instance, anybody who owned these patents and wanted to make money out of them would not be urging you to pass this licensing bill. He would be sitting back asking for as large an amount of German goods to come in as possible, because then he could collect the highest kind of royalty from their coming in. It is a great loss of royalty to the Chemical Foundation to urge the licensing system, but that is not the reason for the Foundation. It is to assist, encourage, and promote American industry. Take salvarsan, and that is the most valuable one——

"SENATOR CALDER (interposing). The most valuable patent?

"MR. GARVAN. Yes, sir. That patent in the hands of a private individual who wanted to confine the manufacture to one man and maintain the price of $3.50, would be worth any amount of money, because 10,000,000 syphilitics would want it. We gave it free to the New York State Board of Health, to Massachusetts State Board of Health, and will give it free to any State Board of Health which will equip itself to manufacture

it safely. The Foundation will never get anything from them. We want, by experimentation, to help cure disease. Of course, that patent is not worth anything; I mean, as far as income is concerned, because we want it to help the public and not to make money out of it.

Take the Badische patent on vat dyes; that is susceptible of income, but there is no income possible until somebody in America successfully manufactures the dyes—except upon importation, like this one here. It was suggested that 10 per cent. was put upon it—Mr. Metz suggested as a license fee on that, coming in. That was fixed when the allocation right was given to the German agents here. It has been the policy of the executive committee of the Foundation to charge to any manufacturer whatever was needed to encourage him, 2 per cent., 3 per cent., or 5 per cent., just whatever was necessary to encourage him to manufacture. But when a German agent wanted to import it we thought it proper to impose the 10 per cent. royalty."

You so testified, did you not?

A. I did.

XQ. 1005. As I understand, you do impose at this time a 10 per cent. royalty on importations?

A. Yes, sir.

XQ. 1006. That covers any importations to which these patents apply, either from Germany, France, England, or any other country, does it not?

A. None come from any other country.

XQ. 1007. Do they not import from Switzerland?

A. No, they have got their own patents.

XQ. 1008. Now, Mr. Garvan, I asked you a direct question if that does not cover any importations from those countries?

A. No.

XQ. 1009. Do you mean to say that you allow free importation if anybody wanted to import from

Switzerland the same products as are covered by the Badische dye patents?

A. There are no dyes under our patents.

XQ. 1010. Mr. Garvan, will you answer my question?

A. I do not get it, Colonel.

XQ. 1011. My question is this: do you not under the patents which you own charge a 10 per cent. import license on all dyes imported into the United States covered by those patents?

A. Yes, sir.

XQ. 1012. And do you not charge or undertake to charge 10 per cent. on any dyes, wherever they may come from, covered by those patents?

A. If they should come from any country covered by our patents, yes, sir.

XQ. 1013. Now, you say that the Chemical Foundation is not undertaking to make income; it is not an income-making concern; isn't that your testimony?

A. No, I do not think that is a correct statement of the testimony.

XQ. 1014. I will read your testimony:

> "For instance, anybody who owned these patents and wanted to make money out of them would not be urging you to pass this licensing bill."

As I understand, the Chemical Foundation is not in that category?

A. They are not trying to make the most money they can out of them. Of course we must make some money.

XQ. 1015. You also say that you charged two or three or five per cent., just what is necessary to encourage him to manufacture; is that the case?

A. Yes, sir.

XQ. 1016. Your purpose is the encouragement of manufacture, is it?

A. Yes.

XQ. 1017. And the development of the American industry?

A. Yes, sir.

XQ. 1018. You are not a money-making corporation?

A. Not primarily.

XQ. 1019. And you grant licenses free to State boards of health for the use of products like salvarsan whenever they need it?

A. We offered to, to those two boards of health, but that is a little over-statement of mine. They maintained their Federal Trade Commission license and felt it safer to keep that than to take ours. We offered it to them free.

XQ. 1020. And you make the statement:

> "And will give it free to any State board of health which will equip itself to manufacture it safely."

Is that true?

A. That is true.

XQ. 1021. You make the further statement that the Foundation will never get anything from them; is that true?

A. From the State Board of Health; yes, sir.

XQ. 1022. You make the further statement:

> "Of course, that patent (speaking of salvarsan) is not worth anything—I mean as far as income is concerned—because we want it to help the public and not make money out of it."

Is that true?

A. That is true. It was true at that time. At that time we had not received, I don't think, a nickel on salvarsan.

XQ. 1023. You make the statement in reply to the question as to whether they are of great value that

they would be to any person who was going to try to make money out of them; is that true?

A. In the sense that I stated it there in that connection, certainly.

XQ. 1024. At page 288 of the testimony before the sub-committee on the Judiciary, Senate Resolution No. 77, at the bottom of the page, you testify as follows:

> "THE CHAIRMAN: Very well. You may proceed.
>
> "MR. GARVAN: That is the company of which Dr. Schweitzer was the president. We then saw that the balance of the patents which were owned by the other five companies of the German Cartel stood naked without any tangible property back of them, and that their purchase at public auction was a dangerous thing, because this company that had been bought was in the best position to buy them, because they had a factory to work them; that some speculator in the patents might come in and get them and hold them just to get the royalties on them from either Germany or whichever was the economic value. You see what I mean. Perhaps I do not make myself very clear. If an individual purchaser came in he would just buy the patents; there would be no obligation on him to work them or to develop them, or to start any business. He might say to himself, 'Oh, well, I will wait until after the war and see how much I can get from the Germans for the re-establishment of them,' or he could give an exclusive license to one person to manufacture one drug or one dye, and that was inconsistent with our developing an industry here which would free us from the conditions which I have outlined. Do I make that clear?"

You so testified, did you not?

A. Yes, sir.

XQ. 1025. Did you not know at that time and at the time that the sale was made that if you sold these patents or any of them to a speculator or a company

which would have the power to create a monoply of them, that you had the power, with the approval of the President, to reject the bid and re-sell?

A. I did not get that question.

MR. ANDERSON: Read the question, please. I want a direct answer.

(XQ. 1025 repeated as above recorded.)

A. Certainly.

XQ. 1026. As a matter of fact, was it not proposed in the beginning of these negotiations by the representatives of the dyestuffs industry that the patents should be sold in groups to the end that those directly interested in those groups might buy them?

A. It might have been. I don't remember.

XQ. 1027. Did you undertake to ascertain, before making the sale, whether there were any persons in the United States engaged in manufacture who would desire to buy these patents or specific group of these patents?

A. I don't remember.

XQ. 1028. Did you not in fact know at that time that there were persons engaged in the manufacture of products covered by certain of these patents who would gladly have bought the patents applying to their specific business at a price far in excess of $250,000?

A. I did not.

XQ. 1029. You did not know that?

A. I did not. There might be one possible exception, of whether I knew Mr. Metz would buy the salvarsan patent. That would be the only one.

XQ. 1030. You knew he would buy the salvarsan patent?

A. I certainly did; if he could get our approval.

XQ. 1031. And the same thing applies to novocain and neosalvarsan?

A. We always considered salvarsan and neosal-

varsan together. Novocain I did not consider. I do not remember it being discussed. That had a very short time to run.

XQ. 1032. At that time was it not a fact that the duPont Company had expended very large sums of money in the development of the dye business and was in fact manufacturing and selling very large amounts of dyes?

A. Yes, sir.

XQ. 1033. Some of which were manufactured under Federal Trade Commission licenses?

A. I think that is a fact.

XQ. 1034. At that time was it not a fact that the National Aniline Company, calling it by the short name —you know what I mean?

A. I do, surely.

XQ. 1035. Had also expended large sums of money in the development of the dye business in the United States and was in fact manufacturing and selling large quantities of dyes, some of which were under the Federal Trade Commission licenses?

A. I think their development had reached very little of the patented things. The rest of the question is true. They were a very large manufacturer of dyes.

XQ. 1036. Was it not a fact that the Newport Chemical Company at that time had developed a large business in this country?

A. I think that is true.

XQ. 1037. And they were manufacturers of indanthrene dyes, were they not?

A. I don't think they had accomplished it at that time. I don't think anybody had.

XQ. 1038. They held Federal Trade Commission licenses, did they not?

A. I think so. I would have to refresh my memory.

XQ. 1039. You did not inquire into these matters?

A. Oh, certainly I did. Mr. Mathewson—I detailed my conversation with him. He was the National.

XQ. 1040. That was the extent of your inquiry?

MR. ANDERSON: Read the question, please. I talked it over with the duPonts and I talked it over with the Newport.

XQ. 1041. Let me ask you this: did you at the time you made this sale know how many Federal Trade Commission licenses were outstanding?

A. Individual numbers, no. I knew that——

XQ. 1042. That is all, Mr. Garvan. I just asked you if you knew how many were outstanding.

A. Excuse me. I beg your pardon.

XQ. 1043. At page 394 of the Hearings before the sub-committee on the Judiciary of the Senate, Senate Resolution 77, at the bottom of the page, you testify as follows:

> "THE CHAIRMAN: Is it your present deliberate opinion that the price fixed was, under all the circumstances and in view of all the facts and conditions, a fair and reasonable one?
>
> MR. GARVAN. Oh, yes; it is. I certainly think so, at least. I mean under these conditions you could not have gotten anybody, except people trying to build up the industry to take that proposition."

Did you so testify?

A. I did.

XQ. 1044. Would you mind stating to me exactly what facts and conditions you referred to?

A. I will endeavor to do it once more. The conditions were that everyone in America who wished to go into the business of making dyes or chemicals or any products covered by these patents would be permitted to at the same royalty at which any of the stock-

holders or any other person in the country was permitted to take out a license; in other words, that the licenses would be non-exclusive; that they would be at a fair and reasonable royalty; that they did not contain any information or sufficient information to enable anybody to go into the business without a large expenditure on research and a large expenditure on extensive plant; that the future of the industry was dependent upon the whim of Congress; that unless Congress protected us from the flood of German goods after the war, the patents would have been worthless; that we had to give a license to the Government; that there could not be anything but 6 per cent. made on the stock; that the rest of it had to be spent in the development of general chemical education; that no stockholder would have any control over his common stock; that the entire management of the company was to be in the hands of these five splendid men who had no connection with the industry and whose sole purpose it was to accomplish the purposes of the Government at that time. Those, generally, were the conditions.

XQ. 1045. Those were the conditions that you represented to the prospective purchaser would be imposed?

A. Certainly.

XQ. 1046. And those were the conditions which made it impossible in your opinion, as you state here, to get anybody except the people interested in building up the industry to take up the proposition?

A. Certainly.

XQ. 1047. And Mr. Garvan, was it not true that at that time the Dyes Institute membership represented 90 per cent. of the production of dyes in this country?

A. I do not know. It has been so stated.

XQ. 1048. You knew of the American Dyes Institute at that time?

A. Oh, yes.

XQ. 1049. You were dealing with a committee of the Dyes Institute, were you not?

A. Yes, but that committee was not to represent the Dyes Institute alone. It represented the entire chemical industry or anybody who in the future wanted to get into it.

XQ. 1050. They could not represent people in the future very well, could they?

A. Oh, yes; they could.

XQ. 1051. I see. Then not only the Dyes Institute people but the entire chemical industy was represented by that Committee?

A. Yes, certainly; and the Manufacturing Chemists' Association was distinctly and separately consulted and Mr. Choate and Mr. Hoguet appeared before them and their members subscribed to the stock.

XQ. 1052. I asked you if they were represented?

A. Yes.

XQ. 1053. Was the Manufacturing Chemists' Association represented at that conference that you speak of?

A. Certainly.

XQ. 1054. It was?

A. Yes.

XQ. 1055. And the Dyes Institute Committee was at that conference?

A. Yes. I don't know——

XQ. 1056. Hold on.

A. Excuse me.

XQ. 1057. So far as you know, both the Dyestuffs industry and the chemical industry were represented in that conference?

A. Oh, yes.

XQ. 1058. In dealing with these patents?

A. Oh, yes.

XQ. 1059. At page 292 of the Hearing before the Senate sub-Committee on the Judiciary, you were

speaking of the salvarsan patent and you testified as follows:

> "THE CHAIRMAN. Who owns this patent?
>
> "MR. GARVAN. The Chemical Foundation. That is the patent on which the allegations are mainly based as to the great value of the patents sold to the Chemical Foundation. This patent is a valuable patent, but what faced us in reference to this patent was, if we sold this patent and one person could buy it, we were not in much better position, or there was no guarantee that we were in any better position than we were before the war, because the purchaser need not have made it. He might have sat back and said, I cannot make it, and therefore we must go back and import it from Germany; and he could have asked his own royalty from the German concern and he could have licensed one of those factories, and there would have been a monoply. In other words, you see the whole principle on which the thing was founded was to prevent a monoply, either American or German."

You so testified?

A. Certainly.

XQ. 1060. Now I will ask you, were there not at that time four concerns engaged in the manufacture of salvarsan in the United States?

A. There were.

XQ. 1061. And they were engaged in the manufacture of salvarsan under Federal Trade Commission licenses?

A. They were.

XQ. 1062. And they were making all the salvarsan that the United States needed at that time, were they not?

A. They were.

XQ. 1063. And you knew at that time that the Federal Trade Commission licenses were granted for the life of the patent, did you not?

A. I think that was within the future consideration of the Court.

XQ. 1064. And you knew at that time that under the Act, Section 10 of the Act, if any person had expended money in the development of his business under a Federal Trade Commission license, the Courts of the United States had a right to confirm that license at a reasonable royalty for the life of the patent, did you not?

A. I did.

XQ. 1065. And when I speak of "at that time," I mean both at the time of the sale and the time of your testimony; you understand that?

A. I think so. I think at the time of my testimony one of the licensees had seen the danger of the Federal Trade Commission license and had surrendered it and taken out ours.

XQ. 1066. But at the time of the sale the conditions that you speak of strictly applied?

A. Yes, sir.

XQ. 1067. Mr. Garvan, at page 417 of your testimony before the sub-committee of the Committee on the Judiciary of the United States Senate, Resolution 77, after statement by you as follows:

"So that the $250,000 was an arbitrary price."

You were asked by the Chairman:

"How was that reached? You explained that a moment ago, but give that to us again.

"Mr Garvan. It was reached by consultation between everybody. There were two branches of it. There were 5700 patents that the Army and Navy had infringed, or might have infringed, etc., in war stuff—guns and airplanes, etc., and so on. On those we gave a general license to the Government, with the discharge of all possible infringements or claims for infringement, for $100,000. Again an arbitrary sum. If it should be decided in negotiations that those were worth more to the United States Government than

the $100,000, why, then the outcome of negotiations will be—or Congress has it within its power to grant more to Germany. But we do not feel that Germany, having brought on the war and compelled our Government to spend the money that we did spend in the war, that our developments should be left at the question of individual owners of patents. And therefore we closed that book as far as the situation of the Navy and the War Department was concerned by giving them a general license.

"Then we gave the Government a general license on all those that the Chemical Foundation took over, including a license for all time to have manufactured for its use or to sell its surplus products, etc., and so on.

"Under our charter the stock was $400,000 preferred and $100,00 common. The preferred is six per cent. cumulative and the common is limited to six per cent. So that no one who ever put a dollar into the Foundation can ever get back anything more than that dollar and six per cent. interest. All over and above that, if the happy day ever comes, will be spent for the benefit of chemical education in America. And we have begun to spend it before we got over that."

You testified to all that?

A. I did.

XQ. 1068. Did you or did you not regard the release to the Government from infringement and the licensing to the Government, as you state, for $100,000, of 5700 patents, as conclusive on that matter?

A. I do not get what you mean there.

MR. KRESEL: Conclusive on what matter, Colonel?

MR. ANDERSON: Conclusive on that transaction; that is, conclusive against the owners of the patent.

THE WITNESS: I do not quite see what you mean. I am trying to.

THE COURT: I do not understand the question, Colonel Anderson. Will you not restate it?

MR. ANDERSON: I will reframe it.

XQ. 1069. Did you regard the license to the Government for these patents and the release from infringement under these patents as you have there described, as conclusive so far as the owner of the patent was concerned, and cut off all his rights in that regard?

A. Do I get you: did I regard that the $100,000 which our Government paid for those 5700 patents——

XQ. 1070. Not for the patents, but for the license.

A.—for the license under the 5700 patents which they had used during our war with Germany, did I regard that as conclusive?

XQ. 1071. Yes.

A. I certainly did.

XQ. 1072. Then you further regarded the granting of that license for the life of the patent as conclusive?

A. I certainly—which license?

XQ. 1073. The license granted to the Government of the United States to use the 5700 patents.

A. I certainly never expected our country would ever pay Germany any more than that.

XQ. 1074. Then your statement as to the outcome of negotiations and the power of Congress to grant more to Germany was merely a statement as to the power of Congress and not an expression of your view as to any obligation on Congress?

A. I never anticipated or felt that Congress had any obligation to give Germany anything more.

XQ. 1075. The present stockholders of the Chemical Foundation embrace or represent substantially the entire dyestuffs and chemical industry in this country, do they not?

A. And textile people and steel people, 151 of the

leading firms of the chemical industry and industries which are affiliated and allied with it. It does not represent all, by any means, in the stockholders.

XQ. 1076. You spoke a moment ago of the sum of $250,000 as being the lowest price that the Alien Property Custodian would accept. How did you arrive at that conclusion, or was there any statement to that effect by Mr. Palmer or by yourself?

A. Mr. Palmer said to get the largest price we could consistent with the purposes we were aiming to accomplish.

XQ. 1077. Did you discuss the basis by which you arrived at $250,000 with Mr. Palmer?

A. I discussed all these things I have recited, several times.

XQ. 1078. I am speaking not of the conditions surrounding the sale, but of the actual amounts fixed. That is what I am talking about.

A. I do not get you at all on that, Colonel.

XQ. 1079. If you are going to fix a price for something, assuming now all the conditions you have described, you would either fix $100,000 or $150,000, or some amount under those conditions. Now, did you and Mr. Palmer discuss the amount?

A. Mr. Palmer definitely—finally made the decision as to price. I gave him all the information which I had from conversations with the industry, and what other sources he had—Mr. Hoguet; he had his own bureaus; and whatever other sources he had that were open to him.

XQ. 1080. Well, he fixed the conditions as to price?

A. He was the Alien Property Custodian; I was not.

XQ. 1081. Did you ever discuss with the representatives of the industry to whom you have referred any other price than $250,000? Was that ever mentioned?

A. Oh, I assume so. I do not know.

XQ. 1082. You do not remember discussing any other price?

A. We did not just take $250,000 out of the air and discuss it. I think we asked them how much they could raise and how much they were willing to give and we discussed how much capital they would have to have to maintain this battle.

XQ. 1083. Can you remember any other sum than $250,000 being mentioned as a price?

A. It is very difficult for me to swear to anything like that. My impression is we started with 500 and then we had to concede them that they had to keep 250 for capital.

XQ. 1084. When did you start with the five hundred?

A. What?

XQ. 1085. When did you start with the five hundred?

A. I do not say that I did. I do not remember, I can not tell you.

XQ. 1086. Was it prior to the 27th of January, 1919?

A. That I can not tell you. I can not even say that we did do that.

XQ. 1087. You can not say that you did do that?

A. No. That would be my impression.

XQ. 1088. Can you say now whether any other sum than $250,000 was ever discussed between you and the industry?

A. If you ask me to say whether any other exact figure was discussed, I can not, no.

XQ. 1089. Mr. Garvan, on Tuesday I inadvertently made a statement that Mr. Choate had testified before one of the committees that he had nothing to do with the preparation of this charter. Upon re-examining

his testimony I found he was referring to the order signed by Mr. Polk.

A. Yes, sir.

MR. ANDERSON: I want to correct that on the record.

XQ. 1090. Mr. Garvan, you said you thought you had read the minutes of the meeting of the Dyes Institute, the Executive Committee of the Dyes Institute, on February 7, 1919?

MR. KRESEL: No.

A. I did in preparation for this trial, but I mean not recently.

XQ. 1091. It appears in those minutes that a draft of the charter was presented and read to the meeting by Mr. Gregg? Do you know who Mr. Gregg is?

A. Gregg?

XQ. 1092. Yes.

A. Do not the minutes show? I do not know.

XQ. 1093. I do not think they show.

A. I will find out for you.

MR. KRESEL: That is a new name to me, Colonel. I do not recall it.

XQ. 1094. It is G-r-e-g-g.

A. I do not know. I do not know who he is. I can find out.

XQ. 1095. The statement in the minutes is as follows——

MR. KRESEL: Pardon me. These are the minutes of the Dyes Institute you are reading from?

MR. ANDERSON: The Executive Committee of the Dyes Institute, of February 17, 1919.

MR. KRESEL: Are those in evidence?

MR. ANDERSON: They are in evidence.

A. I beg your pardon. I thought you were asking me if I had read the minutes of the Washington conference.

XQ. 1096. No, I am talking about something else.

A. Then I beg your pardon. I do not believe I have read those minutes.

XQ. 1097. The minutes show the chief matter under discussion was the formation of the Chemical Foundation, Incorporated. Mr. Poucher briefly outlined the facts concerning the stock subscriptions, etc. Mr. Gregg read the draft of the certificate of incorporation. What I wanted to ask you was whether you knew who Mr. Gregg was?

A. I do not, no.

XQ. 1098. At the time that you had the negotiations and made the first assignment, you knew, of course, that the entire capital stock of the Chemical Foundation was underwritten by members of the Dyes Institute?

A. Yes, sir. The Dyes Institute and the Manufacturing Chemists. It was not all underwritten by one.

XQ. 1099. Do you know whether any of it was underwritten by the Manufacturing Chemists?

A. Yes. The General Chemical was not a member of the Dyes Institute.

XQ. 1100. It is now a part of the Allied Chemical, is it not?

A. If you can give me the list I will tell you which is which.

XQ. 1101. It is not important; apparently they are working together.

A. Lots of Mr. Metz's concerns were there, too.

XQ. 1102. You stated at page 2810 of your testimony on direct:

> "Q. 199 (By Mr. Kresel). By the way, may I stop you there to inquire whether any of these gentlemen ever received a penny for their services?
>
> A. Certainly not."

A. That is to whom?

XQ. 1103. To whom were you referring at that time?

A. I can not tell you unless you let me see the record.

XQ. 1104. Well, it is a little indefinite and I thought you could tell me.

A. No.

MR. KRESEL: Just a minute and I will give it to you, Mr. Garvan. (Hands witness paper.)

THE WITNESS: Oh, the trustees.

XQ. 1105. The trustees?

A. Yes.

MR. KRESEL: What trustees?

THE WITNESS: That is Mr. Bannard, Mr. Dodge, Mr. Ingraham, Mr. Griswold and Mr. Stone.

XQ. 1106. At page 2812 you also testified that Colonel McKay served without pay during the entire time he was there.

A. That is true.

XQ. 1107. Colonel McKay was elected early in March, 1919?

A. I think so. I think he was, at the same time we were.

XQ. 1108. I read you from the report of the Alien Property Custodian, submitted as Document 181, Sixty-Seventh Congress, and printed by the Senate, which report was made under Resolution of January 5, 1922, at page 44.

MR. KRESEL: You mean Colonel Miller's report?

MR. ANDERSON: Yes, that is the official report.

XQ. 1108. (Continued) Under the heading "American Transatlantic Company." The directors get a fee per meeting of $50. There appears the name of Douglas I. McKay, 30 Church Street, New York, elected March 28, 1919, total fees received $2,800. You were on March 28, 1919, the Alien Property Custodian, were you not?

A. Yes, sir.

XQ. 1109. The Alien Property Custodian was then in charge of the American Transatlantic Company, was he not?

A. Yes, sir.

XQ. 1110. And I believe Mr. Palmer testified that the Alien Property Custodian, as he said, appointed or nominated the directors to represent him on these Boards, did he not?

A. Do you mean to insinuate that Mr. McKay was getting money for the Foundation indirectly in that way?

XQ. 1111. No, I am not insinuating anything, Mr. Garvan.

A. Those were services he rendered to that company, for which the company paid him their regular fee.

XQ. 1112. You said these gentlemen had no interest.

A. He had none.

XQ. 1113. You said that?

A. He had none.

MR. ANDERSON: It is entirely legitimate for me to show their interests and the source of their interests in this connection.

MR. KRESEL: I did not object, your Honor but inasmuch as the question has arisen, is it the claim of the Government that because Colonel McKay was paid a fee as a director in some other company, that showed his interest, and that showed Mr. Garvan told an untruth when he said Mr. McKay had no interest in the Chemical Foundation? That can be the only purpose of it.

MR. ANDERSON: No, it is merely this. I will say nothing more than the facts themselves disclose. I desire to reflect upon no one, but since it has been urged here in the testimony time after

time that these gentlemen connected with the Chemical Foundation were serving purely for patriotic purposes, that they had no interest and received no compensation for their connection, I think it is entirely legitimate for the Government to show just what compensations they did receive in connection with this service.

MR. KRESEL: What service?

MR. ANDERSON: Any service connected with the Alien Property Custodian. Mr. Garvan was Alien Property Custodian, as Mr. Garvan was president of the Chemical Foundation. Mr. Garvan was Acting Assistant Attorney General of the United States. It is too well recognized to be subject to discussion or open to debate that interest is a very intangible thing. Where a man acts in various capacities at the same time, the association and connection, and the compensation accorded to the various gentlemen concerned from one source represents an obligation to serve in other connections.

To make it perfectly clear, I think it is a duty, though an unpleasant duty and though I hate to go into it, in view of the evidence which has been presented, to show that not only Colonel McKay but the other gentlemen who were officers of the Chemical Foundation were immediately following their selection for those positions elected to various positions on directorships of various corporations from which they received very considerable compensation. I do not want to reflect upon their character in so doing, or upon Mr. Garvan's, but I think it entirely appropriate, though unpleasant, to show whatever interest they had in that connection and whatever benefits they derived from their transactions with the Chemical Foundation or the Alien Property Custodian's

office, not only as showing an interest, but as showing how these things were interwoven with each other as affecting the character and validity of this transaction. It is for that purpose that I offer this evidence.

MR. KRESEL: If your Honor please, you must have noticed that I have not raised a single objection during the entire cross-examination of Mr. Garvan. I have purposely refrained from raising objections because I never want the Government to be in the position of saying they did not have absolute freedom to ask Mr. Garvan any question that they wished. Therefore I shall not object to this. When we come to argue this case before your Honor I shall take occasion to comment upon the testimony that is now brought out.

I do think, however, that inasmuch as the point is being made, the least that the Government can do is to bring out the dates when these gentlemen were appointed to these lucrative positions, so that at least your Honor may be able to say whether, as intimated by Colonel Anderson, the appointments to these directorships followed their services to the Chemical Foundation.

MR. ANDERSON: It is my purpose to show, and I state it in this instance—that Colonel McKay was elected as a director of the American Transatlantic Company on the 28th of March, 1919. I carefully read that. The record shows that he was elected a director and vice-president of the Chemical Foundation on the 8th of March, 1919. The record shows, therefore, that at the time this sale took place Colonel McKay was an officer of the Alien Property Custodian, or rather a representative of the Alien Property Custodian, as well as a representative of the Chemical Foundation, and that relationship, as applying to the

various parties to this transaction, we regard as one of the essential elements of this case.

MR. KRESEL: I also assume that Colonel Anderson will show what services were performed by these gentlemen for which they got directors' fees.

MR. ANDERSON: I will show what positions they occupied. I can not show the services. I am not undertaking to say whether the fees were excessive or not excessive; I am not discussing that question. I am not engaged in discussing the question of the amounts of the fees. I am not undertaking to attack anybody here; I am merely stating the facts which I think establish an essential relationship, in order that this case may be properly adjudicated. Whether I am mistaken or not is a question for argument, when that time arrives. I invite the fullest comment by counsel in the argument.

MR. KRESEL: It makes very little difference, Colonel Anderson, whether you say you are attempting to attack or no. The fact is you are attacking. You are here insinuating that Colonel McKay sold himself to the Chemical Foundation because he was paid $50 a meeting for attending as a director in another corporation. That is what you are insinuating. And you are also insinuating that Mr. Garvan lied when he said that Colonel McKay had no interest and did not get anything from the Chemical Foundation. You can say that you are not insinuating. You are welcome to it all; I shall not object; you go right ahead.

MR. ANDERSON: I have not insinuated anything, and I am merely bringing out the facts. Whatever the facts show is a matter that I am not in any way undertaking to discuss now. I am not indicating Mr. Garvan was guilty of a

falsehood when he stated this, because I read his testimony as to the Chemical Foundation and then introduced the evidence.

THE COURT: Let me ask one or two questions to find out just where we are, because I find it a little difficult to follow the several contentions at all times, you differ on so many points. In fact you differ on all, not only with respect to the facts, their relevancy and materiality, but you differ in a basic way and in detail. Consequently it is very difficult at times for me to apply the various facts that are brought out and it is difficult to follow the issues. There are days when they seem quite clear; there are days when I think I have not the contention of counsel at all and that I must be all wrong.

I do not mean to invite discussion, but only want a clarification, in other words, of the issues leading up to this. If I understand you, Colonel Anderson—and most of my inquiries are directed to you because you have the laboring oar and are the person seeking to pass from one point to another, seeking to get a decree nullifying this sale, and using the sword, and hence, of course, the shield—the main problems occurring to my mind are those as to whether you have made out a complete case. If I understand you, the Government's position is that the amount received for the patents sold was grossly unjust and inadequate, and if the question is justiciable that would give a ground for setting the sale aside. I assume that is one of your primary contentions, is it not?

MR. ANDERSON: Yes, sir. Your Honor has not quite stated it, primarily. The first contention is that owing to the relationships of the parties the sale or alleged sale, regardless of consideration, was void *ab initio*.

THE COURT: There is a difficulty. I can understand that is a legal question, and one that could be raised and properly could be raised ordinarily and, I presume, proper to be raised here. But I have some difficulty on that point and I wondered if I had misunderstood you. If the purchase price was adequate, then I just wondered whether I had misunderstood you or had understood you, that the United States was pressing to set aside the sale although the purchase price was adequate.

MR. ANDERSON: I was undertaking to state my legal position, as your Honor asked me for my legal premise. First, as a matter of law the sale was void on account of the relationships of the parties and their interests on both sides; second, the purchase price, leaving out the question of the relationship of the parties, was wholly and grossly inadequate, and therefore the Government of the United States—though its policy in that regard is something I have not anything to do with, since it has been directed by people above me—deems it its duty to set aside this sale, providing the Court so adjudicates, and recover these patents, and put them into the custody of the United States, to be held by the United States and disposed of as Congress may direct, in that event to be sold for an adequate consideration.

THE COURT: If I understood you, the plaintiff desires that this sale be set aside on any grounds which may be available, without regard to whether the price received was adequate or inadequate.

MR. ANDERSON: Undoubtedly. The reasons behind the institution of this suit do not concern me, but the plaintiff is here asking the decree on any legal ground upon which it can get that de-

cree; because, as stated by the Supreme Court in the Beebe case, it deems itself charged with the duties and obligations which, whether it be right or wrong, it deems to have been violated. Second, because this property is of a value very far in excess of the value paid, and therefore it is entitled to that for the purposes contemplated by the treaties. That is the first.

So that involves two questions—the relationships of the parties, their interest in the subject matter in their various relationships, and the second question of whether the consideration was adequate. May I just make this suggestion, to make it clearer to your Honor? There are any number of suits in the United States which have been sustained by the Supreme Court of the United States, among them United States v. Beebe, which is the leading case, in which the Government has brought suit to cancel a patent fraudulently obtained, to the public lands, although it had granted and patented the lands to another patentee, and in the event of the success of the suit the lands would go to the second patentee. It has been sustained by the Supreme Court upon the ground that the Government is trustee of all the people and owes a public duty with respect to public lands, and if that duty be violated it is its duty to maintain a suit, even if it receives no material benefit from the suit. But this is a question going to jurisdiction only, and does not concern me as long as the Court has jurisdiction.

THE COURT: Nor me either.

MR. ANDERSON: But, in the second place, the Government not only contends that its duties and its position as trustee for this property have been violated and therefore it must assert its rights

and obligations as trustee, but it claims that the property was disposed of for a grossly inadequate consideration, and therefore the Government, as the primary party in interest, or the people, have a very large interest here, of a material character.

THE COURT: I do not suppose you can help me much so far as the viewpoint of the price is concerned; but is there anything in the Trading with the Enemy Act—I have not re-read it—requiring the Americanization of the chemical industry or the sale of the patents to Americans?

MR. ANDERSON: There is nothing in the world requiring the Americanization of the chemical industry. There is the use of no such language. But if the sale takes place, then the terms of that act do require (I can turn to them if your Honor desires) that it shall be sold to certain persons that are qualified to buy, and that is, to American citizens. Perhaps it is as well to get that clear. Section 12 is the section providing for the sale.

Section 12 provides that the sale shall be a public sale, and so forth, "provided that any property sold under this act, except when sold to the United States, shall be sold only to American citizens."

THE COURT: That is what I had reference to.

MR. ANDERSON: "At public sale to the highest bidder unless the President in the public interest otherwise directs." Now, it may be that that is not in this case. It may be that the President might have been able to authorize the sale to a neutral or one of the allies of the United States. I do not know. That is not involved in this case, and I have not considered it.

THE COURT: No, that is not involved. Have

you read this book that was put in evidence, entitled "The Riddle of the Rhine"?

MR. ANDERSON: No, sir.

THE COURT: There is a paragraph here which interests me, because it seems to me it is important to the consideration of the purchase price. It is by the author of the book in the preface:

"Further, my association with the dye industry, since commencing this book, leaves me with a deep conviction of the critical importance for disarmament, of a world redistribution of organic chemical production. It is inevitable that such a step should benefit the growing organic chemical industries of countries other than Germany, but this issue need not be shirked. The importance of the matter is so vital that it eclipses all reproach that the disarmament argument for the maintenance of the dye industry is used on selfish grounds. Such reproach cannot, in fairness, be heard unless it destroys the case which we have established. We are faced with the following alternatives. Safety demands strong organic chemical industries or cumbersome and burdensome chemical warfare establishments. The stability of future peace depends upon the former, and the extent to which we must establish, or can abandon, the latter depends entirely on the activity and success of those whose special duty it is to organize against war."

That is either right or wrong.

MR. ANDERSON: That is an opinion. I do not know who the gentleman is that wrote that book.

THE COURT: It advances a theory; I do not think of it as a fact. Now, whether in the sale of these patents that theory had a place or had a right to have a place in the minds of those selling, is it your contention that the stability of future peace and the protection of American welfare had no place in the terms or the conditions under

which the patents were sold by the Alien Property Custodian?

MR. ANDERSON: Yes, sir. I will answer your question directly, first. I want to refer to that. I do not want to interrupt your Honor.

That gentleman's opinion may be valuable or not; but I concur that the development of the chemical and dyestuffs industry in the United States—my personal opinion, now—is a very desirable thing, and I would do any legitimate thing to that end if I were in Congress.

But upon what possible theory—and this is answering your Honor's question—it can be contended, or even suggested, that the Alien Property Custodian can have the power or the right to consider a question of that kind and put his judgment in the place of Congress is beyond my conception. Now I have answered your Honor's question. I do contend that it has absolutely nothing to do with it, and if he considered it, he was engaged in an illegal thing.

THE COURT: Then the Government's position is that it denies that those authorized to make the sale of alien property during the war could take into consideration the future welfare, commercial or military, of the United States?

MR. ANDERSON: They could take it into consideration in selecting the purchaser, they could take it into consideration in refusing to accept a bid, in the personnel; but when it came to selling property, they were handling a trust fund, the highest trust known to the law, that of property in charge of a government, of an alien, and it was their duty to handle it in accordance with the laws of trusts and leave the policy on the question to be fixed by Congress. Their duties were fixed by the terms of the Trading with the Enemy Act and

they could not go outside of it or consider anything outside of it.

THE COURT: No doubt about that.

MR. ANDERSON: That being the case, what have they got to do with fixing the policy of the United States? I do not mean to ask your Honor that question.

THE COURT: That is going just a little farther than I had in mind. I assume both sides contend that there is no power vested in the Alien Property Custodian or in any other Government officials, with respect to these patents, save that vested by the Trading with the Enemy Act. I assume that is agreed on both sides. That is probably about the only place you agree.

Now, in determining whether the value is the price received, assuming for the purposes of this discussion, that it is subject to judicial review, or in determining whether the value was shockingly inadequate, it seems to me at the moment that it depends in large measure upon whether the future or the military welfare of the United States could be considered at all in the terms and conditions of sale of those patents, because it seems to me that has a direct bearing on whether the sale was adequate or inadequate.

MR. ANDERSON: I quite agree with your Honor.

THE COURT: I can readily see that, viewed from the German standpoint, the price of these patents was shockingly inadequate.

MR. ANDERSON: The German standpoint hasn't anything to do with it.

THE COURT: You put on Dr. Holdermann, however, who was a witness, and who was a German,——

MR. ANDERSON: Yes.

THE COURT: And I say I can readily see that, viewed from his standoint, the price was shockingly inadequate. But my difficulty is in viewing it from an American standpoint. If the sole power given was to obtain the highest dollar for those patents, without considering the welfare of America, military or commercial, I concede that is one thing; and if there was no power given by this Act for the Alien Property Custodian or the President to consider at all, although a war was then going on,——

MR. ANDERSON: May I suggest the war was over, sir.

MR. KRESEL: It was not over.

MR. ANDERSON: Not technically; but the President had announced it was over.

MR. KRESEL: On the contrary, there was no assurance but that the war might be renewed the next day.

MR. ANDERSON: All right, I did not intend to start a discussion about that.

THE COURT: Well, the war was not over; and if so, there was no certainty that a new war might not begin at any time between us and some other people; and if I understand the theory of this book, which I did not read wholly, but I glanced through it yesterday in large part, it advances some theories which it seems to me make very clear the great and immediate importance of manufacturing plants—I want to get away from the words chemical or dye industry, because they are open to a double meaning in this case—make very clear the necessity for the development of the chemical sciences for the future preservation and protection of America. Now, if that can be considered at all in the selling price or selling con-

ditions, because price is an instrument of conditions, then I can understand that we pretty nearly do not need any testimony.

MR. ANDERSON: Your Honor has reached exactly the view that I reached in this case. In the first place, with reference to that book, if your Honor please, I shall very earnestly contend, as I contended when these books were introduced, that they do not prove any facts at all.

THE COURT: I agree with you absolutely.

MR. ANDERSON: Now, then, if they do not establish any facts, what they contain in there is nothing except the fact that the Chemical Foundation sent them out. That is all they show.

THE COURT: They contain——

MR. ANDERSON: They either show facts or not facts.

THE COURT: As to the Alien Property Custodian's report, you admit the facts stated in there to be facts.

MR. ANDERSON: In the Alien Property Custodian's report, yes, sir. I will stand on that.

THE COURT: And as I understand it, many of the theories here start from the Alien Property Custodian's report as a premise.

MR. ANDERSON: Whatever is in the Alien Property Custodian's report, I am perfectly willing to argue this case on. I am not going outside of that.

THE COURT: The strongest facts I found in this book were taken from the Alien Property Custodian's report.

MR. ANDERSON: That is exactly what I want. Your Honor has got exactly to the meat in this case. Counsel and I have run on parallel lines in introducing evidence to prove something which I think we could probably have sat down at a table

and agreed on, as your Honor stated the other day.

The meat of this case, as I have undertaken to make clear a number of times, is in the principles of law to be applied to it. In my judgment, this case can be decided on the bill and answer, the admissions of the answer. I stated before the trial that that could be done and I so stated during the trial. But we have gone to trial and we have put in all the evidence we had in our possession—it is not all, because there are tons of it—that we thought would throw any light on this situation.

It is my opinion that a very large proportion of the evidence on both sides, your Honor will reach the conclusion, has no material bearing on the decision of the essential and controlling points in this case. But we can not anticipate that. We have to prove every kind of a theory.

Counsel and I differ absolutely on this point. I take the position—and I might as well make it clear. They know it and I want to make it clear to the Court—that while the Alien Property Custodian had the power of sale, it was his duty to sell so as to get the fair value of the property. Not the last dollar, perhaps; because no trustee is required to get the last dollar. He has to use reasonable judgment and discretion to get the fair value of the property. He could not be in the position of buyer and seller at the same time nor could the relation of the parties be so involved that there would not be a clear-cut arms-length dealing. He could not impose conditions upon the property before it was sold, which, though they may have been in the public interest——

THE COURT: And even though the future independence of America may have depended on it?

MR. ANDERSON: Absolutely. That is in the hands of Congress and not the Alien Property Custodian.

THE COURT: Unless Congress delegated that power to the Alien Property Custodian.

MR. ANDERSON: Then you get back to another question. I will put it this way. If the contention as to the construction of this Act and the powers of the Alien Property Custodian, contended for by the distinguished counsel for the defendant, are sound and will be sustained by the Court, then the Alien Property Custodian has taken over all the functions of the Government including the general staff, Congress, and everybody else, and has not only determined the policy and the future welfare of the United States but has taken control of the preparation for future wars; and if there is anything of that kind in the Alien Property Act, I can not find it, or any suggestion of it. So we differ fundamentally on that.

THE COURT: I will hear you, Mr. Kresel, in a minute.

MR. KRESEL: I only want a few words.

THE COURT: If I understand the issues between you, the basic issue between you is here that the defendant contends that in the performance of the duties of the offices created under the Trading with the Enemy Act, and the exercise of the powers of the President and the Alien Property Custodian under that act, they had a right to take into consideration the future military welfare of the United States of America in the sale of the patents.

The position of the Government of the United States now is that in such a sale all the Alien Property Custodian had to do was to hold the patents or sell them for their full value.

MR. ANDERSON: Fair value.

THE COURT: From what standpoint? To whom? Because I can not conceive that there could be an American purchaser of those patents who would pay or could pay an amount equal to the value that they had for their German owners prior to the war. Can you?

MR. ANDERSON: I doubt if an American would have paid that. In so far as they controlled imports, they would be enormously valuable. But in so far as manufacture is concerned, they had less value perhaps to the American manufacturer than to the German manufacturers, because the Germans had the plants.

THE COURT: If these were sold just to control imports and that is established, that would be a fact of interest.

MR. ANDERSON: If your Honor please, my position is perfectly simple. If these gentlemen could have sold these patents as they sold them, they could have sold the whole business for one dollar, although they might have been worth two hundred million dollars.

THE COURT: To whom?

MR. ANDERSON: To anybody in America.

THE COURT: If used wholly without regard to, or sold under conditions which would have given a patent monopoly.

MR. ANDERSON: That is right; although we are not discussing the monopoly phase now.

THE COURT: But you have to consider the monopoly phase in connection with value.

MR. ANDERSON: I will. But my contention is this: If the contention of counsel is sound, that they had a right to take into consideration the commercial welfare of the United States—and I will say that in the order of Mr. Polk stating the

reasons in the public interest, there is no reference to that—if they had a right to take into consideration the commercial welfare of the United States or the industry so-called affected by these patents, then they could consider it to its full extent. That would mean that they could confiscate these patents and turn them over to the industry, because it would benefit America. My contention is that they had to make a fair sale of these patents and that they had no power of confiscation. That is where we differ.

THE COURT: If I understand the contention of the defendant, it is that the commercial welfare of the country, with respect to the chemical and dye industry, is inevitably connected with the military welfare of the country and that the commercial welfare is an underlying factor and the greatest possible protection from a military standpoint. That is their contention.

MR. ANDERSON: I did not know that the Alien Property Custodian was conducting either. But that may be. It may be I was wrong.

THE COURT: I think I see more clearly than possibly heretofore where you differ. I will hear you, Mr. Kresel.

MR. KRESEL: I have only a few words, your Honor. I am groping as much as your Honor is groping to see just what the contention of the Government is and I now understand it to be this: That it was the duty of the President and the Alien Property Custodian to sell this property at a fair price; and while the Government does not define the word "fair," I understand it to mean the full price. And, that the Government, that is, the President and the Alien Property Custodian, in making such sale had no right to consider the military safety of the country.

That leads to this conclusion: that if the President could get only ten dollars for them and protect the country from a military standpoint, he had to decline that because somebody stood ready to pay one hundred dollars for them and the military dependence of the country again be on Germany. I understand that to be the Government's contention.

MR. ANDERSON: As usual, Mr. Kresel misunderstands my contention.

THE COURT: Won't you re-state it, because I got that impression, Colonel Anderson.

MR. KRESEL: You see, even the Court misunderstood you.

MR. ANDERSON: I am a little surprised at the Court's misunderstanding. I am not at all surprised at Mr. Kresel's misunderstanding, because counsel on one side usually view the language of counsel on the other side in the light of their own views.

THE COURT: Mr. Kresel gives an extreme illustration of it, but I do not see how you can avoid that conclusion.

MR. ANDERSON: I thought I had stated it a good many times, but I may not have been clear. I will try to state it this way:

The Government's contention is that the President had nothing to do with the sale of this property or the price obtained. That is at the outset. We differ entirely. We contend that the power of sale was vested in the Alien Property Custodian and not in the President; that the only power of the President in connection with it was that of modifying, by his personal acts, in his judgment, for reasons stated in writing, and those reasons only, which must be stated, such as the method of sale and the other matters

which are set forth in the Act. That is the sole power of the President.

If, for any reason, the sale being made, the conclusion was reached that the bid should not be accepted,—and when I say "sale being made," I mean the offer being made, before confirmation—then the President had the further power, by stating his reasons in the public interest in writing, to set aside that sale. But there he stops. Then the Alien Property Custodian had the power to re-sell or not to re-sell as he saw fit.

There is no obligation in this Act to sell this property at all. It was in the control of the Government of the United States. The Government had a right to use it any way they saw fit and settle that at the Peace Conference and never pay a cent for it if it wanted to. It had the right, by Act of Congress, to confiscate it. It would have been violating a practice of 200 years to have done it.

Since there was no obligation to sell, the public welfare and safety of the United States was not involved. It was not in any risk, because the Government of the United States had these things in its hands and it is just as capable of dealing with the public welfare of the United States as a private business corporation. At least, it must be conclusively presumed to be so by a Court. Then, why sell? That is the first point.

But if the Alien Property Custodian did undertake to sell, as to which there was no obligation whatever, and did undertake to remove this stuff from the control of the Government itself, and put it in the hands of a private owner, however good his motives and however broad the purposes

of the private owner, then he must consider his trust and get the fair value for the property.

If he undertook to sell, reached the conclusion that it was wise to sell and undertook to sell, then it must be a sale and not a gift.

If he felt that the acceptance of the offer of the purchaser or the character of the purchaser or the conditions surrounding the proposed purchase were such as to endanger the welfare of the United States, he still had a position which by analogy may be called *locus penitentiae;* to go back and have the offer rejected and still keep the property in the hands of the United States.

But I do not know anything in the law of the United States or in the history of the United States that justifies or authorizes the officers of the Government to turn over to a private concern the property in the possession of the United States in consideration of the undertaking by that concern to promote the welfare of the United States. That is vested in Congress by the Constitution.

That is my position and that is not what Mr. Kresel stated, by a lot.

THE COURT: It seems to me you differ from him on one particular; and that is that you substitute the Alien Property Custodian for the President. What is the other point?

MR. ANDERSON: The other is simply this: that I contend there was no obligation to sell at all; but if he did sell, he had to make a fair sale. You could not consider the turning over of this property in the possession of the United States in the public interest, because the protection of the public interest could not be a consideration, because the protection of the public interest is primarily vested in the United States already and can not be a consideration for a sale by the United States.

If I have something, how can it be a consideration to me that somebody else will undertake to give me that benefit? I have got it already. The United States Government has complete power to protect the interests of the United States, commercial and military.

THE COURT: No, it has not, Colonel Anderson. Unless it is elaborated in the Alien Property Custodian's report, which I have not read—I have heard you and Mr. Kresel read portions of it and portions of it are quoted in the book which I did read—one of the theories there advanced is that in order that there may be full military protection, the chemical science must be developed through the commercial agencies so that there will be potential arsenals in time for a future war. If that theory is sound, and if I recall it, that is one of the theories of the Alien Property Custodian's report, then does that inject a new phase into the situation?

MR. ANDERSON: I would like to answer your Honor's question on that. I would like very much to do it because you have gotten me to one of the points that interest me in this case.

If that theory is sound—and for the purpose of this discussion I am willing to concede that it is sound, although obviously the Government of the United States can build up its own armament plants—Congress could put an embargo at the ports and prevent the importation of a single thing in competition with American manufacture. It could subsidize these plants in that interest. It could confiscate these patents and turn them over, every last one, to American industry and to anybody that wanted to use them. It could repeal every right under these patents, by virtue of the power of confiscation and settle it at the Peace table.

But to say that an officer of the Government of the United States because of the interests of the United States can ruthlessly confiscate property is to make exactly the same argument that the Germans made at Belgium, the argument of necessity. And if the United States fought this war for that, then we would like to know it.

THE COURT: Do you contend that the amount that was received for these patents fixed absolutely the amount which the Executive and legislative departments of the United States may pay Germany at the Peace table or reparations conference?

MR. ANDERSON: I suppose they could give Germany, as they did Spain for the Philippines, most anything they pleased. But it fixes the obligation of the United States.

THE COURT: Regardless of the fact that the United States has acquired a substantial interest in those patents?

MR. ANDERSON: Undoubtedly. If it is a valid transaction, then Germany can not challenge one particle of it. Nor can it anyhow. This is a question between the United States and its own officers and agents and its citizens. Germany has nothing to do with this thing, because it has agreed that it will not challenge it.

THE COURT: We have gotten somewhat away from the question except that the discussion has disclosed that the Government takes the position that it desires these patents set aside on any legal ground which the Bill of Complaint may support.

MR. KRESEL: Whether the price is adequate or inadequate?

MR. ANDERSON: Absolutely.

THE COURT: Whether the price is inadequate, or on any ground where there may be found to be some technical flaw. Consequently, your objection is overruled.

MR. KRESEL: I raise no objection. I want the record to be clear that I raise no objection.

THE COURT: What was the question?

MR. KRESEL: I think the question was answered.

MR. ANDERSON: Before this discussion I had just introduced or read from the report of the Alien Property Custodian, submitted under Resolution of the Senate, January 25, 1922, showing that on March 28, 1919, Colonel McKay was elected a director of the American Trans-Atlantic Company and that the fees he received as such aggregated twenty-eight hundred dollars.

THE WITNESS: Over what period of time, Colonel?

XQ. 1114. Until the date of this report——

A. Part of it he received under Colonel Miller as Alien Property Custodian. Is that right?

XQ. 1115. That is right. So far as this report shows, the date of service began on the 28th of March, 1919, and the date of termination is blank.

A. The date of the report is what?

MR. ANDERSON: It can be assumed to be up to that date.

I next read from page 141 of the same report, under the heading "Botany Worsted Mills", which contains the following statement:

"Board of directors (fee $5,000 per year and expenses):

"Douglas I. McKay, 30 Church Street, New York, elected Mar. 27, 1919. Resigned Mar. 29, 1921," serving for two years.

I next read from the same report, page 227, under the head of "Foreign Transport and Mercantile Corporation":

"Board of directors (fee per meeting $50):

"Douglas I. McKay, 30 Church Street, New York City, elected member of the board March

28th, 1919; resigned October 11th, 1921; total fees received $2,950."

I next read from page 543 of the same report under the heading of "Stoehr & Sons (Inc.)":

"Board of directors (no fee from Mar. 20, 1918, to Sept. 27, 1921; from Sept. 28, 1921, $20 per meeting)."

THE WITNESS: That is under Mr. Miller, though.

MR. ANDERSON: Yes, I know. I am reading the whole thing. I want to do it all.

"Douglas I. McKay, 30 Church Street, New York City, elected President at $750 per year on September 27, 1921." His fees appear to have been $187.50 and for extra services $250. The total of those amounts is $16,187.50.

XQ. 1116. Mr. Garvan, so far as you know, the election of Mr. McKay as stated in the report in March, 1919, to these several corporations is as stated, is it not? You know he was elected a director?

A. I would assume so.

XQ. 1117. You believed that to be true?

A. Certainly.

XQ. 1118. You stated, I believe, that Mr. George Corbett was Vice President of the Central Union Trust Company at the time that he was elected Secretary and Treasurer of this company?

A. I think I was wrong. I think he was Assistant Secretary, later Vice President. I am not exactly sure of the date.

XQ. 1119. And the Central Union Trust Company was one of the depositories of the Alien Property Custodian, was it not?

A. Practically all the banks and trust companies of the country were:

XQ. 1120. No. Answer the question.

A. Yes.

XQ. 1121. He is now your law partner, is he not?

A. He is.

XQ. 1122. When did he become a member of your firm?

A. I could not tell you the date. I think about a year and a half ago.

XQ. 1123. I think you stated yesterday that he continued as Vice President of the Central Union Trust Company after his election as Secretary and Treasurer and director of the Chemical Foundation for about a year?

A. Yes, I think so.

XQ. 1124. You stated that he did not receive any compensation from the Chemical Foundation during that period as I recall it?

A. Yes, until he resigned and had to give his whole time to the Foundation.

MR. ANDERSON: I now read from the report of the Alien Property Custodian submitted to the Senate in response to Senate Resolution of January 25, 1922, referred to the Committee on Printing on April 10th, 1922, at page 94, under the heading of "Beer, Sondheimer & Co., Inc.," a corporation having $1,250,000, all of which was enemy-owned. It appears on page 94 that the fee per meeting for members of the Board of Directors was $100. In that list of officers appears the following:

"George J. Corbett, Comptroller, at $15,000 per annum." The date of his election is apparently up higher.

THE WITNESS: He was elected long before this.

XQ. 1125. November 18, 1919, was it not?

A. Oh, no. I think it was long before. 1918 it was.

XQ. 1126. In 1918 he was elected Comptroller at a salary of $15,000 per annum?

A. He was elected at Mr. Palmer's request. That is how I became acquainted with him.

XQ. 1127. He was then a Comptroller of this company at the time of the organization of the Chemical Foundation and the sale of these patents in April?

A. That is how I became acquainted with him.

MR. ANDERSON: The same report at the same page, shows that his total fees or compensation as Comptroller of that company amounted to $25,564.50.

THE WITNESS: That is for how long a period?

MR. ANDERSON: It does not appear.

THE WITNESS: That was fixed by the Board of Directors of that company, was it not?

MR. ANDERSON: The report does not show.

At page 423 of the same report, under the heading of "National Zinc Co.," whose authorized stock was $400,000 and the enemy-held stock was $5000, appears the folowing entry:

"George J. Corbett, Treasurer ($1,500 per annum, paid by Company)——$2,830.46."

At page 44 of the same report, under the heading of "American Transatlantic Company":

"Board of directors (fee per meeting, $50.)"

It appears that George J. Corbett was elected a director on December 21st, 1920, and resigned on May 10th, 1921; fees $200.

At page 218 of the same report, under the heading of "Farbwerke-Hoechst Co.:"

"Board of Directors (fees per meeting, $20.):

"George J. Corbett, Central Union Trust Co., New York, elected Director March 11, 1919."

Date of resignation not stated. Fees $60.

At page 227 of the same report, under the heading of "Foreign Transport and Mercantile Corporation," it appears that the directors' fee per meeting was $50; that George J. Corbett was elected a director December 21st, 1920, and resigned April 26, 1921; fees $250.

The total of the amounts so stated was $28,904.96.

XQ. 1128. Can you turn to your books and show what was the compensation received by Mr. Corbett from the Chemical Foundation and the date on which his compensation began and the date on which his compensation terminated?

A. I cannot put it in now. I will put a slip in.

MR. KRESEL: We will get that for you, Colonel.

XQ. 1129. In order to get the statement complete, from your accounts as you presented them here yesterday, I have caused to be made up a summary or total and it appears that his compensation as an officer of the Chemical Foundation began about July 1921, and ended when he resigned as Vice President, which was about what date, do you recall?

A. I cannot recall.

XQ. 1130. And that the total compensation he received as an officer of the Chemical Foundation was $23,125?

A. Yes, sir.

XQ. 1131. I state that on the record subject to your correction.

A. He must have served about a year and three months under salary, because he served at the rate of $15,000 a year. For the first two years, he got nothing.

XQ. 1132. Then he got $15,000 a year?

A. Then, when he devoted his entire time to it and resigned his $18,000 position with the trust company

to do it, he got $15,000 a year for a year and a quarter. When he first came he got nothing and he has given his evenings and time since for nothing.

MR. ANDERSON: It apears that his compensation was from October 1st, 1920, to some date in 1922 and that it was $23,125, or a total from the Alien Property Custodian's office and the Chemical Foundation of $55,029.96.

XQ. 1133. When Mr. Corbett resigned, you elected Mr. Haaren or the Board elected Mr. Haaren Secretary-Treasurer in his place?

A. Not the Treasurer. Mr. Corbett is still treasurer. Mr. Haaren was elected secretary.

XQ. 1134. Mr. Haaren received a compensation of $5000 a year?

A. Either four or five. Mr. Corbett is still treasurer; does all that work for nothing.

XQ. 1135. Mr. Bannard was chairman of the board of the New York Trust Company, was he not?

A. He was.

XQ. 1136. I read from page 640 of the report of the Alien Property Custodian, 1922, to which I have already referred, the following:

> "From January 11, 1919, when the New York Trust Co. was appointed liquidator, the enemy insurance companies handled to July, 1919, approximately $10,000,000 in securities and $4,000,000 in cash were on deposit to the credit of the 23 enemy insurance companies. For these services during the first six months of 1919, the New York Trust Co. was allowed $30,000 by the then Alien Property Custodian, although correspondence on file in this office indicates that they originally asked for $7,500 per month. The records of this office show that up to March, 1921, the New York Trust Co. have been paid a grand total of $42,070.87 for services as liquidator for the 23 enemy insurance companies and in addition a further sum of $58,670.87 was paid them for services as depositary.

During the two and one-half years as liquidator of the enemy insurance companies, the New York Trust Co. had on daily deposit for the 23 enemy insurance companies an average of $1,465,455 in cash and securities of a value of approximately $20,000,000."

A. Colonel, won't you show what every other trust company in New York had before you argue that Mr. Bannard is corrupt in that?

MR. ANDERSON: I am not going to argue that Mr. Bannard is corrupt, and I do not propose to be put in the position of arguing that anybody was corrupt; but I do insist, since the statement has been made that these gentlemen had no interest, that it is perfectly legitimate for me to show their interest.

THE WITNESS: You think because the trust company had——

THE COURT: Do not argue with Colonel Anderson.

MR. ANDERSON: I am not charging anybody with corruption. I am merely showing that they had an interest. It may have been an entirely legitimate interest. I do not deny that they might have been working in a legitimate manner, so far as their interest was concerned; but I do want to show their interest for what it is worth.

XQ. 1137. The New York Trust Company was one of the chief depositaries of the Alien Property Custodian, was it not?

A. One of the depositaries. I think the others were all bigger than the New York.

XQ. 1138. I next read from page 157 of the report of the Alien Property Custodian, the bill of Judge George L. Ingraham to the Alien Property Custodian, dated January 12, 1921, which, in view of the circumstances, I shall read in full, that it may show the amount of service rendered:

"Matter of Stoehr v. A. Mitchell Palmer, as Alien Property Custodian and individually, Francis P. Garvan, as Alien Property Custodian and individually, James N. Wallace *et al.* To professional services in the above-entitled cause since the commencement thereof on Dec. 2, 1918, to date, including among other services the following: Examination of the first bill of complaint, the bill of complaint in action No. 2, the action which superseded action No. 1, the supplemental bill and the demand annexed thereto; conferences with the Alien Property Custodian and his associates; conferences regarding the cause generally; conferences with Mr. Larue Brown, Assistant Attorney General, with Col. Francis G. Caffey and Mr. Earl Barnes, of the office of the District Attorney for the Southern District of New York, regarding the motion for an injunction; attendance before Judge Knox and argument of motion in opposition to plaintiff's motion for a preliminary injunction; services in connection with the order of the court entered thereon; stipulating on behalf of the Alien Property Custodian that there would be no sale pending the disposition of the suit, no injunction being entered by the court; services in connection with the plaintiff's motion to file supplemental bill; services in preparation of answer of A. Mitchell Palmer as Alien Property Custodian and Francis P. Garvan as Alien Property Custodian; conferences with Mr. Lee Bradley as counsel for A. Mitchell Palmer, as Alien Property Custodian and Francis P. Garvan as Alien Property Custodian; many conferences with Mr. John Quinn and his associates as solicitor and counsel for the defendant Stoehr & Sons (Inc.) and its directors and the defendant Botany Worsted Mills and its directors; examination of authorities in

connection with the merits of the case; many conferences in regard to the setting of the case for trial; repeated appearances in court with other counsel in efforts to have the case set for early trial; conferences extending over many days with Mr. Lee Bradley, Mr. Quinn and his associates, counsel for all the other defendants, United States Attorney Caffey and Mr. Barnes, of Mr. Caffey's office, on the facts and the law, as part of the preparation of the trial of the case; attendance at and participation in the trial of the case and services thereon covering most of two weeks; preparation of brief on behalf of Alien Property Custodian and reply brief; consultations regarding opposition to motion for a stay; attendance in court and argument on behalf of the Alien Property Custodian in opposition to motion for a stay; and services in connection with the furnishing of a bond pending the appeal. Conferences in regard to the the advancement of the cause by the Supreme Court; conferences with Mr. Quinn and his associates regarding the filing of the transcript in the Supreme Court; conferences with Mr. Quinn and his associates regarding the brief and the facts to be presented in the Supreme Court; preparation of the brief on behalf of the Alien Property Custodian in the Supreme Court; examination of the brief for counsel for the appellant in the Supreme Court; reexamination of the law and the authorities in the light of the facts developed on the trial, and preparation for the brief in the Supreme Court; conferences with Solicitor General Frierson in Washington preceding the argument; attendance in Washington on the argument and final submission of the case in the Supreme Court; the work on the brief, examination of the law and facts neces-

sary therefor, conferences with Mr. Quinn and his associates, attendance in Washington, occupying the larger part of a month of counsel's time; and for all other services in the above cause down to and including the argument and final submission of the case in the Supreme Court, in full to date $30,000.00

Disbursements:

1920.

June 17. Paid Sidney C. Ormsby Co. for stenographic minutes of the trial, as per detailed receipted voucher annexed, including a daily copy of the minutes of the trial and one-third of the cost of the Court's copy in accordance with the practice 190.40

Nov. 8. Paid Sidney C. Ormsby Co. for transcript of the arguments of counsel, 1,027 folios at the customary rate, as per receipted voucher of Sidney C. Ormsby Co., hereto annexed 308.10

Stenographic work and petty disbursements to date 333.23

Total ..... 30,831.73"

MR. ANDERSON: And I wish at this point to state again on the record that I am not attacking the motives or propriety of the actions of these gentlemen in any way, but I am merely showing interest in response to the question raised by counsel.

XQ. 1138. (Continued.) Now, Mr. Joseph H. Choate was general counsel of the Chemical Foundation on the eighth day of March, 1919, was he not?

A. Yes, sir.

XQ. 1139. I see in the accounts which you submitted in evidence on Tuesday an item of $11,574.84 of organization expenses. Do you know of what that item was made up?

A. No. I will get it for you and put it in in detail.

XQ. 1140. Will you get your counsel to show it to you now and put it in at this point?

(Paper produced by counsel for the defendant.)

XQ. 1141. Will you kindly file in evidence a statement showing in detail the items making up this item of organization expenses?

A. Certainly.

MR. KRESEL: We have it here, your Honor, and we have no objection to its going in.

THE WITNESS: Do not tear it out.

MR. KRESEL: No, I will not tear it out.

THE WITNESS: That is the only copy we have left.

MR. KRESEL: Of course, your people, Colonel Anderson, have had it right along.

MR. ANDERSON: I know; but I just want an answer to the question.

THE COURT: Why not give it to the stenographer and have him copy it into the record right at this point?

XQ. 1142. You have presented in detail the statement which you have referred to, and I will therefore ask the stenographer to copy it on the record as your reply to this question. Is that satisfactory to you?

A. Certainly.

(The statement presented by the witness is as follows):

"EXHIBIT A.—SCHEDULE 6."

Sheet No. 1.

ORGANIZATION EXPENSE.

Date.	Name.	Detail.	Amount.	Total.
1919.				
Mar. 20.	Secretary of State	State Tax	$50.00	
		Indexing	2.00	
		Certifying Cert. of Inc. ..	4.50	
				$56.50
	Recorder of Deeds	Recording Cert. of Inc. ..	5.50	
		Notary Fees	.50	
		Revenue Stamps	.30	
		Messenger to Dover, Del...	4.30	
		Telephone & Telegraph..	.70	
		Stock Ledger, Stock Transfer Book	7.00	
		Corporate Seal	3.00	
		Minute Book	10.00	
				31.30
Apr. 5.	Brown, Green Co.	8 Books of Preferred & Common Stock Certificates		271.00
Dec. 31.	Joseph H. Choate, Jr. ..	Legal Services		10000.00
1920.				
Apr. 29.	Brown, Green Co.	Printing 1000 Trust Certificates		168.00
June 15.	Central Union Trust Co..	Imprinting 1 line on 250 Stock Certificates	5.00	
		Federal Tax Stamps on 840 shares preferred stock at 5¢ each	42.00	
		292 shares common stock at 5¢ each	14.60	
				61.60
June 25.	Geo. M. Fisher, State Treas.	Annual Franchise Tax for 1919		43.19
July 7.	Evarts, Choate, Sherman & Leon	Application fee for authority to Corp. to do business in State of New York		11.00
15.	Kalamazoo Loose Leaf Binder Co.	2 Full Latigo Current binders with R. M. lettered four lines gold and indexes		35.80

Date.	Name.	Detail.	Amount.	Total.
23.	Evarts, Choate, Sherman & Leon	Balance of application fee to do business in New York State—Total Fee $52.00		41.00
Aug. 11.	Central Union Trust Co..	Federal Tax Stamps on 2371 Shares Preferred stock at 5¢ each		118.55
26.	Comptroller of State of New York	Capital Stock Foreign License Fee		536.13
		Carried Forward ..		11394.07
		Brought Forward ..		$11394.07
Oct. 22.	Albert Hepp & Co.	1—200 Page Cash Book..	$3.00	
		250—Triplicate Sets Transfer Sheets—Voting Trust Certificates **Common Stock**—#1 to 250 and Preferred Stock #1-250	60.00	
		100 Sheets Carbon Paper	4.00	
		4 Permanent Binders for Transfer sheets of which 2—Common—2 Preferred	22.00	
		2 Temporary Binders for Transfer sheets of which 2—Common—2 Preferred	8.00	
		1000 Ledger Sheets each Voting Trust Certificates for Common and Preferred Stock	45.25	
				142.25
Dec. 21.	Lloyd Van Doren	R. R. tickets to Wash., D. C.		38.52
				$11574.84

XQ. 1143. Mr. Garvan, what has been Mr. Choate's compensation as general counsel of the Chemical Foundation?

A. I think in the four years and a quarter it has been $10,000.

MR. KRESEL: A year?

THE WITNESS: No, no, the entire compensation.

XQ. 1144. In addition to his compensation in the organization of the company?

A. I think that is all he has ever received.

XQ. 1145. Haven't you proved other compensations on your books?

A. I will make positive before the recess, but my impression is that all he has ever had from the beginning is $10,000.

XQ. 1146. I believe you testified that Mr. Ramsay Hoguet was patent counsel of the Alien Property Custodian and was also appointed or elected patent counsel of the Chemical Foundation on March 8th; is that right?

A. Yes, sir.

XQ. 1147. Mr. Garvan, do you know what compensations Mr. Hoguet received from the Alien Property Custodian and from the Chemical Foundation during his service to each?

A. I do not. I think for the services of his firm, anyway.

XQ. 1147-a. Well, he was a member of what firm?

A. Emery, Varney, Blair & Hoguet.

MR. ANDERSON: In order to shorten the examination, I offer in evidence a paper consisting of four sheets, entitled "Statement of Fees and Compensations paid to the firm of Emery, Varney, Blair & Hoguet by A. P. C. for dates stated, as shown by A. P. C. Report of 1922." It has the headings showing name of company, page of Miller Report, date and amount. I offer it subject to

examination and verification by counsel, as Plaintiff's Exhibit No. 613.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 613." (*See Exhibits, Vol. III, page 1480.*)

XQ. 1148. Mr. Garvan, can you from your books and with the assistance of your accountant now tell me the aggregate amount of legal fees paid to the firm of Emery, Varney, Blair & Hoguet by the Chemical Foundation, showing the first date and the last date of such payments?

A. I can put in an itemized statement before we resume this afternoon.

XQ. 1149. Will you hand the statement to the stenographer and insert it on the record as your answer?

A. Yes, sir. (Statement to be furnished by witness.)

XQ. 1150. Who was Mr. W. F. Keohan?

A. Mr. W. F. Keohan was a newspaper man who worked in Washington. At the time I took him he was working on the Liberty Loan drives.

XQ. 1151. He was publicity agent of the Alien Property Custodian in the Bureau of Investigation from January 1, 1919, was he not?

A. Yes, sir.

XQ. 1152. Do you recall what salary he received?

A. I do not know. I think $4,000 or something like that.

XQ. 1153. The report shows that he——

A. Whatever the report shows.

XQ. 1154. The report shows that he first received $3000 and afterwards $4000. Would you say that that was right?

A. Why, certainly.

XQ. 1155. Mr. Garvan, after you assumed certain duties in connection with the Department of Justice,

as to which you testified on Tuesday, Mr. Keohan was appointed a special agent of the Department of Justice, was he not?

A. I don't think so. I would not be clear as to that.

XQ. 1156. How long did he continue as the publicity agent——

A. He helped do the publicity work in relation to the Bolshevik fight that the Department of Justice carried on. Now, I am not sure how his compensation was.

XQ. 1157. Did he continue as publicity agent of the Alien Property Custodian?

A. I would have to look that up, Colonel. I would not be able to tell you.

XQ. 1158. By reference to the minutes of the Chemical Foundation for October 2, 1921, it appears that at that meeting Colonel McKay resigned as vice-president, Mr. Corbett's salary was fixed at $15,000, and Mr. Keohan was appointed as a representative of the Foundation in Washington, the statement contained in the minutes being: "Mr. Keohan has represented the Chemical Foundation at Washington for the past year and a half and has done valuable work for the Chemical Foundation in the past." Is that a correct statement of the situation, so far as you know?

A. Well, his business when he came to the Foundation was in relation to our relations with the different departments. We were working with the Agricultural——

XQ. 1159. I mean he had been representing the Chemical Foundation for a year and a half when he was elected to the head of the Washington office.

A. I can get the date. I do not remember whether it was a year or a year and five months, but that is approximately correct.

XQ. 1160. He was then appointed head of the Washington office or Washington representative of the

Chemical Foundation at a salary of six thousand a year, as stated in these minutes?

A. Yes, sir.

XQ. 1161. Does that accord with your recollection?

A. Yes. He was the liaison officer between the Foundation and the Government.

XQ. 1162. He is still manager of the Washington office, is he not?

A. Yes, sir. We have no office; he has desk room in an office there.

XQ. 1163. He is the representative of the Chemical Foundation in Washington?

A. No, he is not the representative. He represents the Foundation in particular work.

XQ. 1164. What is the particular work

A. He has no authority to represent them. In working with the Chemical Warfare Service, National Research Council, Department of Education, Tariff Commission, Department of Commerce—in fact every department of the Government except the Department of Justice.

XQ. 1165. Have you a statement in your accounts that you have presented here, showing the expenses and detail of the Washington office?

A. Certainly.

XQ. 1166. Would you present it?

A. I can get it for you just as rapidly as it can be separated out.

XQ. 1167. I just want that report; I do not call for the original book.

MR. KRESEL: We produce three reports, and the fourth one is now in the possession of the stenographer, who has just taken it out to make a copy of what was put in.

XQ. 1168. Can you by reference to those reports show me the details of the expenses of the Washington office?

A. It will take some time. Those reports are made up for different periods, the first is for a year and a half, I think, the next for six months, and then the next six months up to January first. But I can make you up a detailed account in an hour.

XQ. 1169. I would like very much to have that made up, if you can do it, showing the details.

A. Certainly.

MR. KRESEL: We will do it.

MR. ANDERSON: I will take it up later in connection with the accounts.

XQ. 1170. Who is Mr. W. W. Buffum?

A. He was an accountant in the Alien Property Custodian's office.

XQ. 1171. Do you remember the period of his service?

A. I do not.

XQ. 1172. Did he serve as long as you were there?

A. I think so.

XQ. 1173. He was there during the entire period you were Alien Property Custodian?

A. I think he was there before I was there.

XQ. 1174. Before you were there?

A. I think so.

XQ. 1175. And served after you left?

A. Yes, sir.

XQ. 1176. Is he now connected with the Chemical Foundation?

A. He is.

XQ. 1177. When did that connection begin?

A. That I could not tell you. I can get the exact date.

XQ. 1178. Could you give me the date that he resigned from the Alien Property Custodian's office and the date that he became connected with the Chemical Foundation?

A. I will get it, certainly.

MR. KRESEL: We will give you the date now. Mr. Buffum is right here.

MR. BUFFUM: July 15, 1921.

MR. ANDERSON: And he became connected with the Foundation when?

THE WITNESS: I should say the next day.

XQ. 1179. Who is Mr. J. R. Zimmerman, who was in the office of the Alien Property Custodian?

A. I think he was—

XQ. 1180. Head of the Bureau of Trusts?

A. Head of the Bureau of Filing.

XQ. 1181. Was he not afterwards head of the Bureau of Trusts under you?

A. No.

XQ. 1182. Are you sure of that?

A. Positive.

XQ. 1183. He was in charge of files, then; is that it?

A. The files, yes.

XQ. 1184. Do you know when he resigned?

A. No.

XQ. 1185. Is he now connected with the Chemical Foundation?

A. He is working for us during the preparation of this case.

XQ. 1186. Will you tell us the date when he became connected with the Chemical Foundation and the date of his resignation from the Alien Property Custodian's office?

A. Yes, I think it was three or four months ago when we began to prepare for this case.

MR. KRESEL: Colonel, I understand all that information is in Colonel Miller's report.

MR. ANDERSON: Could you give it to me—because this report is not indexed.

MR. KRESEL: We would be very glad, Colonel, to stipulate all of this matter.

MR. ANDERSON: I know you would.

MR. KRESEL: If you would only ask us to do it.

MR. ANDERSON: Until after the evidence the other day I had not expected to put it in, but after going over the evidence the other day the testimony there would seem to me to require this information.

MR. KRESEL: We will give you that information in a minute.

XQ. 1187. It is stated here that Mr. Zimmerman resigned from the Alien Property Custodian's office June 1st, 1922.

A. Yes.

XQ. 1188. Is it about that time he became connected with the Chemical Foundation?

A. No.

XQ. 1189. When was it?

A. Months later. I think he went into business in Philadelphia. It was when we began to prepare for this case. It is only a few months.

XQ. 1190. When you began to prepare for this case he became an employee of your company?

A. (None).

XQ. 1191. What was the connection of Mr. L. H. Boggs with the Alien Property Custodian?

A. Boggs was a lawyer.

XQ. 1192. Was he not general counsel?

A. I think toward the end Mr. Boggs was head of the Law—yes, I know he was.

XQ. 1193. General counsel for you as Alien Property Custodian?

A. Yes, sir.

XQ. 1194. He is now one of the counsel in this case, is he not?

A. Yes, sir.

XQ. 1195. He has been counsel for the Chemical Foundation in Washington since what date?

A. I think about July first of last year.

XQ. 1196. Was he not general counsel in 1921?

A. I do not think so.

MR. KRESEL: Colonel, we will get you that. Mr. Boggs is right here. Mr. Boggs, Colonel Anderson wants to know when you became counsel for the Chemical Foundation?

MR. BOGGS: October, 1921.

MR. KRESEL: October, 1921.

MR. ANDERSON: I accept that. Thank you very much, Mr. Boggs.

XQ. 1197. With what firm is Mr. S. M. Stellwagen connected?

A. Palmer, Davis & Scott.

XQ. 1198. Is that Mr. A. Mitchell Palmer?

A. Yes.

XQ. 1199. Mr. Stellwagen was once an attorney in the office of the Alien Property Custodian, was he not?

A. He was. He was the expert on legislation.

XQ. 1200. On legislation?

A. Yes.

XQ. 1201. Do you know about what time he left the office of the Alien Property Custodian?

A. No.

XQ. 1202. Do you know what time he became connected with the law firm of Mr. A. Mitchell Palmer?

A. I would assume about March 4, 1921.

XQ. 1203. Certainly very soon after the retirement of Mr. Palmer from the office of Attorney General?

A. I think Mr. Palmer began to practice almost immediately.

XQ. 1204. Mr. Stellwagen is one of your counsel in this case, is he not?

A. Yes, sir.

XQ. 1205. The firm of Palmer, Davis & Scott has

represented the Alien Property Custodian in Washington since 1921, have they not?

A. Represented the Alien Property Custodian?

XQ. 1206. I mean the Chemical Foundation.

A. In certain matters.

XQ. 1207. They have been the attorneys for the Chemical Foundation, in certain matters?

A. Certainly. Mr. Stellwagen has, and I assume that carried the name of the firm. He has done the work.

XQ. 1208. He has done the work?

A. Yes.

XQ. 1209. As a matter of fact, they represented the Chemical Foundation in connection with the license to the Navy Department of these patents which you spoke of?

A. He worked with the Navy in the drawing of it. That is, as to the technical details, getting the license numbers, the numbers of the patents and all those things correct.

XQ. 1210. Who is Mr. F. E. Haynes?

A. Mr. F. E. Haynes is a young lawyer.

XQ. 1211. Was he once attorney for the Alien Property Custodian?

A. I am not sure whether he was admitted to the Bar while he was there. He was admitted to the Bar while he was there, I understand.

XQ. 1212. He was in the office of the Alien Property Custodian?

A. Yes.

XQ. 1213. While you were Alien Property Custodian?

A. Yes, sir.

XQ. 1214. He was then connected with the Department of Justice, was he not?

A. He was what?

XQ. 1215. He was for a while connected with the Department of Justice?

A. Yes, sir.

XQ. 1216. That is while you were discharging certain duties in connection with the Department

A. Yes, sir.

XQ. 1217. And he is now one of the attorneys in this case, is he not?

A. No. He is an attorney in my office.

XQ. 1218. He is an attorney in your office?

A. Yes, sir.

XQ. 1219. But he is engaged actively in this case?

A. No, sir. He is in my employ—my personal employ.

XQ. 1220. But he is one of the attorneys in the room in this case and helped in the preparation of this case; is that so?

A. Oh, yes.

XQ. 1221. On Monday Mr. Kresel introduced a report which was made by a man named Edward S. Rogers.

MR. ANDERSON: Am I right about that?

MR. KRESEL: Rogers is the name. I do not recall the initials.

XQ. 1221. (Continued) Claimed to be connected with the Federal Trade Commission, which on the facts before us we admitted he was, at the time—connected with the Federal Trade Commission. Was not Mr. Rogers subsequently employed by the Chemical Foundation, about January, 1922?

A. I am not sure that there was not some one trade-mark matter. I will look that up and find out.

XQ. 1222. You think as far as you can remember he was?

A. I think he charged us only his disbursements, that is all, in some matter that he attended to.

THE COURT: We will take a recess now until one o'clock Eastern Standard Time.

(Recess until 1.00 o'clock P. M. Eastern Standard Time.)

AFTER RECESS.

XQ. 1223. Mr. Garvan, defendant put in evidence on Tuesday a report by Mr. Norton, formerly agent of the Department of Commerce? You recall that, do you not?

A. Yes, sir.

XQ. 1224. In the question on Tuesday, either I in my question or you in your answer, inadvertently referred to him as an agent of the Department of Justice. There was no such person who was an agent of the Department of Justice?

A. No, sir.

XQ. 1225. Do you know where Mr. Norton is now?

A. No, I do not.

XQ. 1226. Do you not know he is employed by the duPonts?

A. I understand he is not and has not been for some years.

XQ. 1227. There was also some evidence put in here as to Captain Dix, of the War Department, in connection with negotiations as to the nitrogen patents. Do you know where Captain Dix is now?

A. I do not.

XQ. 1228. There was also a good deal of evidence of Major A. M. Holcomb, of the War Department. Do you know where Major Holcomb is?

A. I do not.

XQ. 1229. Have you been able to get up a statement from your books of the amounts of fees paid Messrs. Emery, Varney, Blair & Hoguet by the Chemical Foundation?

A. No, I have not.

XQ. 1230. The Alien Property Custodian approved the various payments to counsel and others representing these matters, did he not, during the period of the Alien Property Custodian's office?

A. They were first fixed by the Boards of Directors and then approved by us.

XQ. 1231. Approved by the Alien Property Custodian?

A. Yes, sir.

XQ. 1232. Or, where the service was rendered to the Alien Property Custodian direct, they were of course approved by him?

A. Certainly.

XQ. 1233. You spoke of Mr. Bradley Palmer's connection with this matter. Do you know when he became connected with the A. P. C.'s office?

A. Very shortly after it was organized.

XQ. 1234. My records show March 26th, 1918. That would be about the time, would it not?

A. Yes.

XQ. 1235. And they further show that he was connected with the office as an attorney; is that in accordance with your recollection?

A. Yes, sir, general adviser.

XQ. 1236. Mr. Bradley Palmer was actively associated with you and Mr. A. Mitchell Palmer in connection with the plans for the organization of the Chemical Foundation and the sale of these patents, was he not?

A. I do not know how much part he played in it. I was in New York and he was in Washington. I assume we advised with Mr. Palmer on every important thing.

XQ. 1237. In your evidence before the Committee on Ways and Means, to which reference has frequently been made, at page 244 you say:

"For a month or six weeks Mr. Palmer and myself and Mr. Bradley Palmer and others sought in every way possible to find some way by which we could turn the idea over to the Government and make it efficient in the use and protection of the patents."

Was that true?

A. Undoubtedly.

XQ. 1238. In the same book, at page 272, you testified as follows:

"MR. MOORE: Do you know who drafted that Executive order signed by Frank L. Polk?

"MR. GARVAN: I can give you my best belief, based upon the course of business in the office, that it was drafted by Mr. Mitchell Palmer after consultation with Mr. Bradley Palmer, and, undoubtedly, after consultation with Mr. Hoguet, who was the principal adviser on patents.

"Mr. Moore: Mr. Ramsay Hoguet?

"Mr. Garvan: Yes.

"Mr. Moore: Who is associated with Mr. Choate as counsel of the Chemical Foundation, Inc., of which you are President?

"Mr. Garvan: He is not associated with Mr. Choate, but he is our patent counsel.

"Mr. Moore: And Mr. Ramsay Hoguet, with whom Mr. Palmer probably conferred, as you say, over the drafting of this Executive order by Frank L. Polk, was named as associate counsel with Mr. Joseph H. Choate, Jr.?

"Mr. Garvan: Yes.

"Mr. Moore: Of the Chemical Foundation, Inc., of which you are President?

"Mr. Garvan: Of the Chemical Foundation, Inc., yes. And, furthermore, I think you will find that order received the consulting advice of every big patent lawyer in the country representing these big manufacturers."

Then further on, there was another question:

"Do you still say you do not know who pre-

pared that Executive order signed by Frank L. Polk?

"Mr. Garvan: I have given you my best impression, that it was Mr. Mitchell Palmer, Mr. Bradley Palmer, and Mr. Hoguet."

Is that your testimony?

A. Yes, sir.

XQ. 1239. Do you know who paid the expense of Mr. Bradley Palmer to Paris?

A. Probably the State Department.

XQ. 1240. You do not know?

A. I do not know. He was appointed at the request of the President or appointed by the President.

XQ. 1241. Hold on. I just asked you whether you knew.

A. No.

XQ. 1242. You don't know anything about the request of the President; you did not see the President?

A. I know that the President appointed him.

XQ. 1243. Did you see the President yourself?

A. Did I see the President—what?

XQ. 1244. At that time?

A. No.

XQ. 1245. Anything that you know on that is what people told you?

A. No, I know it from my communications with him while at the Peace Conference, under the official seal of the State Department, through the State Department.

XQ. 1246. With whom?

A. Bradley Palmer.

XQ. 1247. You communicated with Bradley Palmer?

A. Certainly. All communications at the Peace Conference were made through the State Department.

XQ. 1248. No matter who it was?

A. No matter who it was, it had to go through the State Department. If I wanted to cable to the Peace Conference, I had to send my cablegram to the State Department, have it vised there and forwarded to Paris and then the Paris Peace Conference would send the cable here and the part of it that was for my attention would be de-coded by the State Department and sent to me.

XQ. 1249. You also sent some cables to Dr. Herty over there, did you not?

A. Yes, sir.

XQ. 1250. Who paid his expenses?

A. The Chemical Foundation, at the request of the State Department and the Peace Mission.

XQ. 1251. Mr. Garvan, I asked you who paid his expenses; I did not ask you at whose request or how.

THE COURT: Do you want the latter part of the answer stricken out?

MR. ANDERSON: Yes, sir.

THE COURT: Let it be stricken out.

XQ. 1252. Can you state now when he became a member of the voting trust of the Chemical Foundation?

A. Who—Mr. Bradley Palmer?

XQ. 1253. Yes.

A. I had that date yesterday.

XQ. 1254. The minutes of the Chemical Foundation show——

A. Wait a minute.

MR. KRESEL: April 4th, 1921, Colonel.

THE WITNESS: April 4th, 1921.

MR. ANDERSON: April 4th, 1919, according to our records.

THE WITNESS: No, you are wrong.

MR. KRESEL: It is 1921.

XQ. 1255. Mr. Garvan, do you recall whether you communicated with Mr. Bradley Palmer a request to

get a provision in the Peace Treaty expressly ratifying the sale of these patents?

A. No, I do not think I did.

XQ. 1256. You do not recall whether you did or not?

A. No, my communication with him was to get a ratification at the Peace Conference of all our acts, and I do not think it mentioned the Foundation at all.

XQ. 1257. Would you mind just answering this question: do you recall whether you communicated with him requesting him to get a ratification of the particular sale of these patents?

A. The best of my recollection is I did not. I have all my cables. I will look it up.

XQ. 1258. After your appointment as Alien Property Custodian on the 4th of March you continued to seize these chemical and dyestuff patents and transfer them to the Chemical Foundation on the various dates named in the assignments in the record in this case, did you not?

A. Yes, sir.

XQ. 1259. At that time you were familiar with the provisions of the Trading with the Enemy Act, Section 12, as to the holding and disposition of property by the Alien Property Custodian?

A. I was generally familiar with the Act; yes, sir.

XQ. 1260. Were you at that time familar with the provisions of the report of Mr. A. Mitchell Palmer, dated February 22, 1919, with respect to the manner of holding property by the Alien Property Custodian?

A. Yes, sir.

XQ. 1261. At the time you made the several conveyances here involved, were you familiar with the by-laws of the Chemical Foundation which gave to the survivors of the Voting Trustees the power to fill

vacancies and created in them a self-perpetuating body for seventeen years?

A. Yes, sir.

XQ. 1262. As a lawyer you were then and you are now familiar with the duties, obligations and limitations of trustees?

A. Of what trustees?

XQ. 1263. Of any kind of trustees.

A. There are so many different kinds I won't swear I am familiar with all of them.

XQ. 1264. On April 10th, 1919, at the time the principal conveyance was made, and at the time of the subsequent conveyances shown by the record, were you familiar with the provisions of Section 1783 of the Revised Statutes of the United States, which provides as follows:

> "No officer or agent of any banking or other commercial corporation, and no member of any mercantile or trading firm or person directly or indirectly interested in the pecuniary profits of contracts of such corporation or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation or firm, and every such officer, agent or member or person so interested who so acts, shall be imprisoned for not more than three years and fined not more than two thousand dollars."

A. No, I do not think I was. I never heard of it until this minute.

XQ. 1265. Never heard of it until this minute?

A. No.

XQ. 1266. On April 10th, 1919, were you familiar with the plan of sales organization and the rules and regulations of the Alien Property Custodian's office, promulgated by the Alien Property Custodian on June 6th, 1918?

A. Yes, sir.

XQ. 1267. You were, then, familiar with the following provision contained in the order entitled "Plan of Sales Organization and Rules and Regulations," dated Washington, June 6, 1918, as contained in the report of A. Mitchell Palmer, Alien Property Custodian, at page 206:

> "It is necessary that every precaution should be taken to enable properties to be sold fairly and for a proper price, without any possibility of favoritism or undue advantage in favor of any particular purchaser."

You were familiar with that, were you?

A. Certainly.

XQ. 1268. You were also familiar with the provision in those Regulations, Page 209, Section 2, which reads as follows: "Under no circumstances will any person in the employ of or connected with the organization of the Alien Property Custodian be permitted to bid for or purchase any property, or be interested directly or indirectly in any such purchase, or in any corporation or syndicate interested therein. This provision also applies to local representatives and local attorneys in the sales of properties in respect of which they have represented or acted for the Alien Property Custodian."

A. Yes, I was familiar with that.

XQ. 1268a. Do you not know as a matter of fact that on May 2d, 1919, the Advisory Sales Committee refused to approve the sale of the Hackfeldt property at Honolulu, on the ground that one person interested in the purchase had formerly been connected with the Alien Property Custodian's organization?

A. No, that is all gone from my mind at this time.

XQ. 1269. You are familiar with the Bosch Magneto sale, are you not?

A. Very.

XQ. 1270. Do you not know that after the prop-

erty was bid in by the purchaser, the Liberty Securities Corporation was required to retire fom the syndicate because Mr. Bowers, the vice-president of that company, had been an officer of the Bosch Magneto Company appointed by the Alien Property Custodian?

A. I think it was before the bid was made he retired.

XQ. 1271. He was not allowed to participate in the sale, isn't that true?

A. No; he had a money interest in it.

XQ. 1272. Did you not at the time these conveyances were made know that all contracts made by the Government of the United States during the war contained an express provision, as required by law, prohibiting any officer of the United States, or member of Congress, or agent of the United States, from having any interest in said contract or the provisions thereof or the benefits thereof?

A. I did not know that was a specific statute, but I assumed it was the law, naturally.

XQ. 1273. Did you not know that at the time this sale was made and subsequently the laws of the United States prohibited any person from aiding any contractor in making out his bid, advising any contractor, or in any way being interested with any contractor or the person contracting with the Government of the United States, in the transaction of business between the Government and such contractor?

A. I did not know the statute. I assumed it was the law. I knew it was ethics.

XQ. 1274. Were you not at that time familiar with the provisions of Section 6 of the Trading with the Enemy Act, providing as follows:

> "That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report

shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof."

You were familiar with that provision, were you not?

A. Yes.

XQ. 1275. Did you ever submit to the President of the United States or to Congress any report during the term of your office as Alien Property Custodian, which you have testified covered a period of more than two years from March 4, 1919, to March 12, 1921?

A. No.

XQ. 1276. Did you ever make any report to the President or Congress showing a list of persons appointed or employed by the Alien Property Custodian during your term of office, with the salary and compensation of each, and a statement of the kinds of property taken into custody and the disposition made thereof, as provided by Section 6 of said Act?

A. In great part I did. I prepared that whole thing for the Committee on Appropriations.

XQ. 1277. What committee on appropriations?

A. The House Committee on Appropriations.

XQ. 1278. When?

A. Before the date of my testimony there. They were awaiting legislation, and we made the report to Congress showing everything up to Mr. Palmer's time, and it was not considered policy to put the Government to any expense until Congress was ready to take it up, with continuous repetition of printing, and so forth, of what had already been done and what would eventually have to be done properly at the time that Congress was ready to legislate. It was all there, and I said there, we notified every Congressman and Senator that they could get any information in five minutes from our books; they were up-to-date.

XQ. 1279. Did you ever make to the President or to Congress any report giving a list of the patents, trade-marks, copyrights and other property assigned to the Chemical Foundation, or showing the sale thereof or the disposition thereof, or any report showing the seizure thereof, in any way?

A. No.

XQ. 1280. You are, of course, familiar with the provisions of Section 1780 of the Statutes of the United States, providing that "Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any act of Congress, within the time prescribed by law or by regulations, shall be fined," and so forth, are you not?

A. It was the President's duty to report, not mine.

XQ. 1281. You are familiar with the fact that the President delegated or vested in the Alien Property Custodian certain duties under this Act, are you not?

A. Yes. If he would have wanted me to report, he would have notified me.

XQ. 1282. Including the seizure of property and the execution of the provisions of Section 12?

A. Yes. The report had to be made to him. If he wanted it, he could have gotten it in five minutes.

XQ. 1283. You have testified that you were familiar with the fact that the Federal Trade Commission issued from time to time and was issuing licenses to American manufacturers to manufacture, vend and use products and processes provided by patents and also trade-marks owned by alien enemies, is that true?

A. Yes.

XQ. 1284. You were aware that payments under such licenses were made to the Alien Property Custodian under the terms of said Act and in fact were collected by you as Alien Property Custodian during your term of office; were you not?

A. Yes, sir.

XQ. 1285. You were aware that the Alien Property Custodian had seized a number of contracts in favor of alien enemies made with American citizens by alien enemies providing for the payment of royalties or other compensation for the use of patents in the United States, owned by such alien enemies, were you not?

A. Yes.

XQ. 1286. You were aware that you as Alien Property Custodian were collecting compensations or royalties provided for by said contracts and payable thereunder from time to time during your term of office, were you not?

A. I was.

XQ. 1287. You were of course aware that under Section 10 of the Trading with the Enemy Act, the maximum royalty allowed to be charged under such license by the Federal Trade Commission was 5 per cent.?

A. I did not know that.

XQ. 1288. And further, that United States Courts were given jurisdiction within one year, upon suit of the owner of the patent, to fix a reasonable license fee and to confirm said license for the life of the patent where expenditures had been made in the development of the processes or in connection with the use thereof; you knew that?

A. Yes, sir.

XQ. 1289. You of course knew at the time of these various assignments that in the event no expenditures had been made under such licenses, and the same should be for any reason terminated at the end of the war, though granted for the life of the patent, and the same had been seized by the Alien Property Custodian, that the title to such patent with the right to use the same was vested in the Alien Property Custodian subject to such final disposition as Congress

might direct under the Trading with the Enemy Act; were you not?

A. I do not know. I would like to have you read that again.

XQ. 1290. I will read it over to you. You were of course aware that in the event no expenditures had been made under such licenses of the Federal Trade Commission and the same should be for any reason terminated at the end of the war, though granted for the life of the patent, and the patent had been seized by the Alien Property Custodian, that the title to such patent, with the right to use the same, was vested in the Alien Property Custodian subject to such final disposition as Congress might direct, under the Trading with the Enemy Act?

A. Yes, sir. I mean, provided it had not been sold by the Alien Property Custodian.

XQ. 1291. Yes. Did you not while Alien Property Custodian and as President of the Chemical Foundation, subsequent to the assignment of these patents to the Chemical Foundation, urge the licensees of the Federal Trade Commission to surrender their licenses and take out licenses under the Chemical Foundation?

A. Yes, sir.

XQ. 1292. Did you not have your patent counsel, Mr. Hoguet, appear before the Federal Trade Commission on behalf of the Chemical Foundation and urge that Commission to accept such surrender?

A. Yes, sir.

XQ. 1293. You were aware, were you not, that the Attorney General of the United States was by law the legal adviser of the Alien Property Custodian?

A. Yes, sir.

XQ. 1294. Did you ever obtain from the Attorney General of the United States an opinion as to the right of the Alien Property Custodian to sell property at private sale or as to the legality of the several sales

and assignments made by you to the Chemical Foundation?

A. No, sir.

XQ. 1295. Did you ever obtain from the Attorney General of the United States an opinion as to the right of the Alien Property Custodian to sell alien property seized by him at less than its fair value?

A. I don't think I did.

XQ. 1296. I just asked you if you obtained such an opinion?

A. I don't think so.

XQ. 1297. Did you not know that the trade-marks sought to be conveyed by you under the assignments in evidence in this case, with which you are familiar, were trade-marks upon products manufactured by German concerns in Germany?

A. I would have to examine to find out whether that was universally true. I would say it was generally true.

XQ. 1298. Did you not know that the business with which the said trade-marks were associated was in fact conducted in Germany and the products sold under such trade-marks were produced in Germany?

A. In general, I should say that was true.

XQ. 1299. Did you not know that you had not seized and could not seize or convey a business with which said trade-marks were associated or the plants in which the products under said trade-marks were in fact manufactured, since they were outside the territorial limits of the United States?

A. That is a big legal question on which there are two sides. You mean that the trade-mark won't go with anything except a going business?

XQ. 1300. Yes. I believe you testified Tuesday that you did not make any inquiry as to the amount of accrued license fees or the monthly or annual income

under licenses issued by the Federal Trade Commission?

A. I did not.

XQ. 1301. And the same applies to income on contracts held by the Alien Property Custodian?

A. Yes.

XQ. 1302. Did you make any inquiry as to the reasonableness of the Federal Trade Commission license fees provided in the various licenses issued by that Commission?

A. No.

XQ. 1303. I again read from page 360 of your evidence on H. R. 2706, already referred to, in which you replied to a question by Mr. Green, as follows:

> "Why, Mr. Green, it was by virtue of our connection with the Alien Property Custodian's office that we saw it as our public duty not to let this thing revert to where it was, and everything we have done since has been because of what all of us saw was threatening America and because we saw the situation which had been hanging over America before the war, and it was in our endeavor to use that information for the benefit of the American people that we assumed the burden of carrying on this fight."

I think you said that was your tesitmony?

A. It was.

XQ. 1304. Now, Mr. Garvan, do you mean to tell me that your purpose in making the assignment of April 10, 1919, and the assignments thereafter made by you were with a view of promoting and developing American industry by making these patents available to American industry on the best terms possible?

A. That was only a means to the end, to our aim.

XQ. 1305. That was a means to an end?

A. To our aim.

XQ. 1306. What was your real aim?

A. Our real aim was to make this country safe,

to win this war. Without the building up of this industry, the war was lost and is lost today. And furthermore, to lay a foundation for the future development of American medicine. And only upon the basis of a developed organic chemical industry can either of those two things be accomplished and if it is not accomplished, the Germans have still won the war. France finds it out today. England has found it out and America found it out.

XQ. 1307. I don't mind about America, but as to England and France, you were not undertaking to develop their industry, too, were you?

A. No, they are taking care of themselves.

XQ. 1308. I thought so.

A. They are doing the same thing over there.

MR. ANDERSON: That I move to strike out. He cannot know what they are doing in England and France.

THE COURT: Motion granted.

XQ. 1309. Were you on April 10, 1919, and on the dates of your subsequent conveyances to the Chemical Foundation familiar with the provisions of Section 3, sub-section B, of the charter of the Chemical Foundation, which is as follows:

> "In furtherance of the above objects and purposes the Corporation may grant non-exclusive licenses only, to make, use, and sell the inventions covered by any patents owned or controlled by it to the United States of America, upon such terms as the Board of Directors may determine, and also upon reasonable and equal terms and without advantage, as between licensees, to the following: (1) Natural persons, citizens of the United States; (2) Copartnerships, all the members of which are citizens of the United States; and (3) Corporations organized under the laws of the United States or of any state, territory, or dependency of the United States, of which not less than three-fourths of the capital stock and the beneficial in-

terest therein is owned by stockholders who are citizens of the United States and who were not, prior to the 'end of the war,' as used in the 'Trading with the Enemy Act,' enemies or allies of enemies, as defined by said Act, and the amendments thereto.

"The Board of Directors may refuse to issue any license or may revoke any license granted by the Corporation and may prescribe the terms and conditions of said licenses."

A. Yes, sir.

XQ. 1310. You were familiar with that?

A. Certainly.

XQ. 1311. And you were familiar with all the other provisions of the charter, I assume?

A. I think so.

XQ. 1312. I will read to you your evidence before the Committee on Ways and Means referred to here as the Hearing on H. R. 2706, page 245, in which the following takes place:

"Mr. Green. I asked the gentleman what he meant by efficiency in this connection. Instead of answering that directly he was drifting off into some other matter.

"Mr. Garvan. I was illustrating. There is no efficiency in a Government-owned patent which is open to everyone, because no one will spend the money to develop an invention under such circumstances and fit up plants for the purpose of manufacture when a neighbor can put up another plant next door to him the next day. If these patents had been thrown open to the public we would have been in the same position and had no protection against a German project——

"Mr. Green (Interposing). Let me show you how utterly irrelevant that is. You are proposing by this Chemical Foundation to permit non-exclusive licenses to be issued. That is, one man can put up a factory, and another man can get a license and may put up another factory, and by that same

argument the Chemical Foundation would not know what the situation was.

"Mr. Garvan. To the capacity of the industry, you will find in the charter."

Mr. Garvan, as you are familiar with the charter, can you point out any provision in it that limits your duty to license to the capacity of the industry?

A. No, not in that language?

XQ. 1313. Not in that language?

A. It does in spirit and does in intent and purpose.

XQ. 1314. And you have so acted under it?

A. No one but a German has ever complained of that proposition.

XQ. 1315. You have so acted under it, have you?

A. Absolutely.

XQ. 1316. Who determines the capacity of the industry?

A. We have never had to determine the capacity of the industry, because we have not reached it yet.

XQ. 1317. You say you acted under it in that spirit. I will ask you again to answer my question. Assuming you had to exercise that judgment, who determined the capacity of the industry, in your understanding?

A. I will explain it to you. We called together all the stockholders of the industry and asked them what should be our general rule on that and it was decided some two or three years ago that no license would ever be refused.

XQ. 1318. Is there a matter of any record on that?

A. Yes, sir. That is a matter of record in one of the first meetings, on the minutes of the Foundation, of the Advisory Committee. You will find it there.

XQ. 1319. Now, suppose an application came up——

3095

A. (Interposing) So that this idea of limiting —at first, for instance, we were afraid—the thing that made us use that word was the salvarsan patent, because Dr. Stieglitz and others thought that the Department of Drugs could not take care of more manufacturers of salvarsan than they were taking care of then; that they could not provide the funds to examine and so forth.

XQ. 1320. Now, I will ask you this——

A. There was that reservation that was necessary to keep for special circumstances because of our ignorance of what the development of the industry would demand.

XQ. 1321. I see. I will ask you again the question which I asked you before. When you came to the question of the capacity of the industry, who would determine it in your understanding?

A. I don't know, because we never got there.

XQ. 1322. You stated in Congress you had a limitation to the capacity of the industry?

A. That was in our minds at that time.

XQ. 1323. You understood that was within the meaning of your charter?

A. That was in our minds at that time.

XQ. 1324. At page 294 of the same testimony before the Committee on Ways and Means you stated in answer to a question by Mr. Crisp:

> "MR. CRISP: If these patents were sold to any individual they would have a monopoly.
>
> "MR. GARVAN: Absolutely, so far as the patents go."

A. What page is that?

XQ. 1324. (Continued) Page 294.

> "MR. COPLEY: Can not those trustees equally as well create a monopoly by licensing?
>
> "MR. GARVAN: Our charter provides that we

must give a license to every American who applies for the charter, up to the capacity of the industry. All the stock, of course, is held by the manufacturers themselves and the consumers. Now, if the trustees attempted to do anything to depart from the terms of their trust, the Courts would step in right away on behalf of the stockholders to prevent it."

Is that your testimony?

A. Yes, sir.

XQ. 1325. Have you not refused licenses in several instances?

A. No, sir.

XQ. 1326. Did you not testify here on Tuesday they had refused licenses in two instances?

A. I testified to one instance alone; one where we deferred a license.

XQ. 1327. Who determined the question as to the refusal of that license?

A. As to the refusal of the license—which one?

XQ. 1328. That one that you did refuse?

A. I think it was the Board of Directors.

XQ. 1329. The Board of Directors determined that?

A. I am not sure what formality—whether there was ever a necessity of formally refusing it.

XQ. 1330. You said you had never given an exclusive license?

A. No, sir.

XQ. 1331. Did you not give an exclusive agency to the Pacific Flush Tank Company?

A. That is not an exclusive license. That is an agency to go out and solicit business for us. A license in every city of the country, there is nothing exclusive about that.

XQ. 1332. And they have the exclusive right to license have they not?

A. No, you will find it provided that they had to come back and get the licenses issued by us; but they have a right to go out and drum up business for us.

XQ. 1333. Then it is an exclusive agency, whatever it is?

A. Yes, it is an exclusive agency to go out and push that one patent, to get as many licensees as possible.

XQ. 1334. At page 359 of your testimony before the House Committee on Ways and Means, you were testifying as to the licenses and you make this statement in reply to a question of Mr. Green:

> "That charter in reference to license was approved—drawn, practically drawn, but approved—by every dye manufacturer in the country. Now, if they thought that their ability to get license was to be limited, they never made a suggestion of it. They had their lawyers, Mr. Kalish—they had at least 15 or 20 of their lawyers who went over the charter and the license provision was drawn in accordance with their wishes. The Dye Institute, which is an open institution now, composed of every dye manufacturer in the country who cares to join, and with an open invitation to every manufacturer who manufactures a pound of dye in the country to join, the license is as the industry requested it, and that language is their language, so that they are not alarmed by it."

Is that your testimony?

A. Yes, sir.

XQ. 1335. In your testimony before the Committee on Finance of the United States Senate, on H. R. 8078, at page 550, you testified as follows; question by Mr. Demming:

> "Mr. Demming: With regard to the Chemical Foundation and the patents which the Chemical Foundation owns, isn't it the privilege of the Chemical Foundation to decline or to allow the

privilege to ayone whom they may select to make products under any patent?

"MR. GARVAN: No; I do not believe it would be considered by any court. We would have to show some reason for doing it, for not issuing it to some American. We never shut out anybody or refuse a license. A German can not come over here and take out a license from the Chemical Foundation. Those patents are for the purpose of educating American chemists, and the Germans cannot send their chemists over here and evade our plan or rules, but any American who wants to develop the industry in America can take out any license he wants.

"MR. DEMMING: Then it is the policy of the Chemical Foundation to apply the same principles for the stocks of the Chemical Foundation for the privilege of the right to manufacture under any patent which they hold if they will grant him a license.

"MR. GARVAN: That is our policy.

"MR. DEMMING: No matter who he is?

"MR. GARVAN. 'No matter who he is' is pretty broad.

"MR. DEMMING: Then you do retain the privilege or the right to exercise a choice?

"MR. GARVAN: Suppose a man wanted a thing for the purpose of blackmail, or for a wrongful purpose, or for the purpose of forcing fake stock upon the people and to advertise he had valuable patents?

"MR. DEMMING: You are judges of that.

"MR. GARVAN: First, under the constitution, the stockholders themselves who own the business and the trade, make their recommendations to us, and we follow their recommendations.

"SENATOR CURTIS: In short, it is the purpose to grant the request of any reliable applicant?

"MR. GARVAN: Certainly. First, the application goes—for instance, for dye patents, to the dye trade for recommendation as to the man. For instance, as to the Badische patents, dye patents,

we have already granted five or six licenses; and anyone can come in and get a license who will help on with this general cause."

Is that your testimony?

A. Yes, sir. Does it appear who Mr. Demming was?

XQ. 1336. He was a member of Congress, I think.

A. No, no, no; he was an employee of Mr. Metz.

XQ. 1337. Very good. I have no objection to that appearing on the record. But you did so testify, did you not?

A. Yes, sir.

XQ. 1338. You spoke there of referring it to the stockholders. Do you refer in that connection to the Advisory Committee?

A. That is what I referred to. We referred that general question to them and they passed on it and said it was better to have a regulation leaving no restrictions on granting a license.

XQ. 1339. There is included in this record, as Exhibit F with the Bill of Complaint, and as being introduced in evidence as an exhibit, a paper entitled "Constitution and By-laws, Chemical Foundation, Advisory Committee." Is that the committee to which you refer?

A. Yes, sir.

XQ. 1340. Is that the constitution which you referred to in your evidence, where you said, "under our constitution"?

A. I suppose so; I do not know exactly.

XQ. 1341. You have no other constitution have you?

A. No, no.

XQ. 1342. This Advisory Committee consists, as appears from the constitution, of the President and the Vice President of the Chemical Foundation, a rep-

resentative of the American Dyes Institute and a representative of the Manufacturing Chemists' Association of the United States, to be respectively chosen by each association, the chairman of the Section Committee, and not to exceed five committeemen at large, to be chosen by the Chemical Foundation. Is that the organization of it now?

A. Yes, sir.

XQ. 1343. Can you tell me who that Advisory Committee is today, and who they represent?

A. Well, I can get it for you.

XQ. 1344. I would like very much to know the names of the members of the Advisory Committee and what institutions they represent.

A. I can name some of them for you.

XQ. 1345. Name what you can of them. Will you put in an answer to this question giving a complete list of the Advisory Committee, showing the organizations which they represent, commercial organizations?

A. Yes, sir.

MR. KRESEL: That appears from the minutes of that committee, which are in, Colonel. But we will give it just the same.

MR. ANDERSON: It does appear from the minutes.

MR. KRESEL: Yes, the minutes are in. You put all of them in.

MR. ANDERSON: I will get the witness to identify some of these gentlemen who appear to have attended these meetings.

MR. KRESEL: What date is this?

MR. ANDERSON: The meeting of October 18th, 1922.

XQ. 1346. At that meeting there were present Francis P. Garvan, Mr. James T. Pardee, of Section 1. What section was that?

A. I do not know which section he came under. He is of the Dow Chemical Company, but they have several different lines. They are heavy chemical people, dye people and drug people. I do not know which section he was in.

XQ. 1347. Dr. W. J. Schieffelin?

A. That is the Schieffelin Drug Company.

XQ. 1348. That is drugs?

A. Yes.

XQ. 1349. Mr. George P. Adamson?

A. I do not remember which company he is in.

XQ. 1350. That is Section 3. Mr. E. A. Colby, Section 5. Do you know him?

A. No. I mean I cannot identify his company.

XQ. 1351. Mr. Henry Howard?

A. Mr. Howard is Secretary of the Manufacturing Chemists' Association. He was with the Merrimac Chemical Company at that time, now with the Grasselli.

XQ. 1352. At the meeting on October 26, 1921, there were present Mr. Henry Wigglesworth—whom did he represent?

A. General Chemical Company, heavy chemicals.

XQ. 1353. Who was Mr. S. S. Norton?

A. Of the Permutit Company, a resuscitation company, which has that machine for resuscitating people overcome.

XQ. 1354. At the meeting of April 20th, 1921, I find present Mr. Pardee, Mr. Schieffelin, Mr. Wigglesworth, Mr. Norton and Mr. Howard, whom you have identified, and Mr. J. Merritt Matthews, representing the American Dyes Institute. Was that Dr. Matthews?

A. Yes, that is Dr. Matthews. He is the editor of a color journal, a dye journal.

XQ. 1355. I find at another meeting on November 18, 1920, the additional name of Dr. W. T. Cashman.

He represented the Grasselli Chemical Company, did he not?

A. The Grasselli Chemical Company.

MR. KRESEL: Colonel, do you still want us to furnish a list to date? We will do it, if you say so.

MR. ANDERSON: You might give me the list, and if it adds any names I will put it in; if it does not, I will not.

MR. KRESEL: All right.

MR. ANDERSON: Because the committee as provided by the constitution is much larger than that and I want to see if it was ever filled.

XQ. 1356. I note in the provisions of the charter which I read you a while since there is contained the statement that the board of directors may fix the terms of all licenses and may cancel licenses. Have you ever cancelled any licenses?

A. Not except on request, I do not think.

XQ. 1357. Are you sure about that?

A. Before swearing positively I would like to make an examination. I have no recollection of a license that we have cancelled except at the peoples' request. But I would like to see Mr. Buffum there, who might tell me. Mr. Buffum informs me we have not.

XQ. 1358. All of your licenses issued by you to domestic manufacturers or dealers contain a provision to the effect that the licensee is not permitted to import under that license, do they not?

A. I think so.

XQ. 1359. You think so?

A. I think so.

XQ. 1360. Of course, the license form is in evidence. I will show it to you if you wish.

A. That is so, to my recollection

XQ. 1361. Your license fee on all importations I think you said was 10 per cent?

A. Yes, sir.

XQ. 1362. I mean a royalty.

A. A royalty. We have no license fee.

XQ. 1363. Your royalty on all importations is 10 per cent.?

A. Yes, sir.

XQ. 1364. But you do have a license fee for issuing the license of $100?

A. Not on importations. On domestic manufacture.

XQ. 1365. Is not that 10 per cent. based upon the American price, which includes 60 per cent. import duty now imposed on dyestuffs?

A. Yes, sir.

XQ. 1366. It is?

A. Yes, sir.

XQ. 1367. Then the 10 per cent. which you levy is on the gross American selling price?

A. Yes, sir.

XQ. 1368. Do you know of any provision in your charter limiting the power of the Board of Directors to prescribe such import license royalty as they may see fit?

A. No, sir.

XQ. 1369. Mr. Garvan, much has been said here about the so-called Haber nitrogen patents. At the time that these patents were transferred by you to the Chemical Foundation did you know the production of synthetic ammonia in Germany under those patents? I mean the amount of production of synthetic ammonia per annum.

A. No. I knew it was large during the war.

XQ. 1370. Did you know the amount of synthetic ammonia consumed in the United States at that time?

I am not speaking of the present, but did you know it at that time?

A. I knew at that time, in the spring of 1919, that there was an enormous surplus here.

XQ. 1371. No, I asked you if you knew the annual consumption of synthetic ammonia here.

A. No, I beg your pardon, I did not. I probably did at that time, but I do not know now.

XQ. 1372. And you cannot now recall whether you knew at that time?

A. I cannot definitely recall.

XQ. 1373. You made no investigation of the subject yourself?

A. Oh, it was discussed all the time.

XQ. 1374. But I mean you made no personal investigation of the subject of synthetic ammonia in the United States, did you?

A. I do not know what you mean by an investigation. All of our war literature was full of it and all of our departments were full of it, and we knew it was why Germany had been allowed to keep on with the war and all that.

XQ. 1375. I ask you if you had made any personal investigation. We need not go into that.

A. Oh, I could not. I am not a chemist.

XQ. 1376. Your counsel showed the other day from a card of the Federal Trade Commission that that card showed no income under the license issued under the Haber patent to the Semet-Solvay Company, that I recall.

A. No, it showed some income there.

XQ. 1377. No, I am speaking now of the Federal Trade Commission license.

A. Oh, no.

XQ. 1378. The Chemical Foundation did in fact license the use of the Haber patents after it took them over, did it not?

A. Yes, sir.

XQ. 1379. To the General Chemical or to the Atmospheric Nitrogen Company?

A. Semet-Solvay. I think that that read to the Semet-Solvay.

XQ. 1380. The Semet-Solvay?

A. Yes.

XQ. 1381. The General Chemical and the Semet-Solvay are now constituents of the Allied Chemical, anyway.

A. I think the license read to the Semet-Solvay. But it is in evidence, that license. I won't be certain.

XQ. 1382. Do you or do you not know that the business of producing synthetic ammonia at Syracuse, which has been referred to here, is carried on in the name of the Atmospheric Nitrogen Company—or is it?

A. I would not be able to swear to that here. I know it is a subsidiary or part of the Allied Chemical Company.

XQ. 1383. Mr. Garvan, could you produce a copy of that particular license?

A. Certainly. I think it is in evidence.

XQ. 1384. I do not think any of the licenses have gone in, just the forms; but I would like to see that particular license.

A. We have it here.

MR. KRESEL: We will show it to you.

XQ. 1385. How many licenses have you issued to persons or corporations not stockholders of the Chemical Foundation, do you know?

A. I think it is about half and half.

MR. KRESEL: What do you mean by that? That does not mean anything.

THE WITNESS: Out of the four hundred odd I think half of them are to non-stockholders.

XQ. 1386. Any of the statements you put in show the licenses issued to stockholders?

A. We have it here.

XQ. 1387. We can check that then, from the record, can we not?

A. We had it here the other day. We can get it over night.

XQ. 1388. If it appears from the record already put in where we can get it I do not want to bother you and have to put it in again.

A. It is either in or can be checked.

MR. ANDERSON: If we can figure it out from the record I will not have the witness put it in again.

MR. KRESEL: Here is the license that you asked for, Colonel. (Handing counsel.)

THE WITNESS: That includes more than the Badische. There are more than those relating to the Badische patents; all we had was put into that.

XQ. 1389. At page 296 of your evidence before the Ways and Means Committee already referred to, you were asked by Mr. Longworth:

> "That is what I wanted to get at now. Of the 4500 patents at least the ones that are of real value here, practically, relate to the vat dyes?
>
> "Mr. Garvan. The vat dyes.
>
> "Mr. Longworth. And which are not made in this country?
>
> "Mr. Garvan. Not made in this country.
>
> "Mr. Longworth. And are of great value to the American manufacturers?
>
> "Mr. Garvan. Tremendous; that is the first aim.
>
> "Mr. Longworth. Almost a necessity for certain kinds of cloth, are they not?
>
> "Mr. Garvan. They certainly are."

That is your testimony, is it not?

A. Yes, sir.

XQ. 1390. You said yes?

A. Yes, sir.

XQ. 1391. Mr. Garvan, are not the indanthrene dyes among the most valuable?

A. Yes, sir.

XQ. 1392. Of the present patented dyes. Is it not true that all of the licenses issued by you for indanthrene dyes are held by the Newport Chemical Company and the duPont Chemical Company, or both?

A. No, sir. I do not think so. I think other companies hold them.

XQ. 1393. Are you sure about that?

A. I can verify it.

XQ. 1394. The record that you put in the other day, that large exhibit, from my study of it shows they were the holders of the patents on indanthrene dyes.

MR. KRESEL: Holders of the patents?

MR. ANDERSON: I mean of the licenses.

A. I think there are other licensees on specific dyes. You see, the National has the Federal Trade Commission license on those dyes. They have never surrendered those.

XQ. 1395. Who is that?

A. The National Aniline.

XQ. 1396. They had the Federal Trade Commission license?

A. Yes.

XQ. 1397. But the only licenses you have issued so far as your statement shows are to the Newport Chemical Company and the duPont Chemical Company on indanthrene dyes?

A. I think there are other licenses there.

XQ. 1398. You would be guided by your statement, would you not? Whatever that statement shows you would say was right?

A. Yes. I will look it up.

XQ. 1399. You put in that statement, and that

statement is correct, is it not—that large statement showing the patents and the revenues?

A. Oh, yes. But sometimes you cannot tell by the name of a dye whether it is an indanthrene or not. I would have to look that over. Those two companies have made the most progress in making vat dyes, I want to be frank about that. They are the two that are farthest ahead in that matter.

XQ. 1400. Do you know anything about the selling price of indanthrene dyes and colors in 1914 and the present selling price?

A. No, the Tariff Commission could tell you that; I could not.

XQ. 1401. You cannot testify as to that at all?

A. Oh, I could look it up and get it from the royalty paid to us on the selling price, and then I can get it from—I can get it for you if you want it.

XQ. 1402. I would like it very much if either you or some other witness, one of your accountants or witnesses as your counsel may find most convenient—it matters not which to me—would give me from your records, if it can be done, the selling price on these indanthrene colors in 1914 and at the present time.

A. We have not the records of 1914.

MR. KRESEL: Colonel, if you will be good enough to give us a list of just what colors you are interested in, we will try to get you the information.

THE WITNESS: That would come from the Tariff Commission.

MR. KRESEL: We will get it in some way.

MR. ANDERSON: Here is a statement which I have had made up showing the patent number, the color covered by it, and the sales for the fiscal year, the selling price for 1914, the present selling price, and the present manufacturers, domestic manufacturers, and the date of the expiration of the patent. If you will check that and find out

whether it is right, I will put that information in as evidence, so as to save us both trouble.

MR. KRESEL: We will do that. Colonel, as long as you are resting now from a question, I want to hand you a list of the licensees of the Chemical Foundation who are stockholders and a list of the licensees who are not stockholders (handing counsel).

THE COURT: Do you want those marked?

MR. ANDERSON: All right, sir, but I want a chance to study that list and I cannot stop now.

XQ. 1403. You have only one license outstanding under the Haber process patents?

A. Prior to January 1st, 1923.

XQ. 1404. Mr. Garvan, you have put in evidence here a paper which purports to be a release to the United States of all claims for infringement on all enemy-owned patents seized by the Alien Property Custodian, which you said you delivered to Mr. A. Mitchell Palmer as Attorney General. Can you hand me that paper? You recall that release, do you not? There is no use waiting for it. There was no consideration named in that instrument at all for the release, was there?

A. Do you want me to weaken the Government's title to that release?

XQ. 1405. No, I am not doing that.

A. I would rather not testify against the Government on that.

XQ. 1406. Mr. Garvan, I am not asking you to testify against the Government.

MR. KRESEL: The instrument speaks for itself to begin with.

A. The instrument speaks for itself.

XQ. 1407. All right. Did you, then, investigate to ascertain how many patents had been infringed by the United States during the war?

A. I listened to the Army and Navy on the subject.

XQ. 1408. Did they tell you how many?

A. They told me it would amount to probably hundreds of millions of dollars, if they had to pay it.

XQ. 1409. Do you know whether or not the Peace Treaty provided protection to the United States in that regard?

A. That was later. That had not been drawn at that time.

XQ. 1410. It had not been drawn at that time?

A. No.

XQ. 1411. May I ask what was your idea of your authority to execute a release to the United States of all claims for infringements of patents; where did that authority come from? I just want your idea, the idea on which you acted?

A. Why, I don't like to testify to what I have done, which may be used against the Government in hundreds of millions of dollars of suits. I don't think I ought to be called upon to do it. I have not the paper before me. I would want to study up that transaction before I testified.

THE COURT: The Government of the United States is now asking for that information, so I will have to ask you to answer, Mr. Garvan.

THE WITNESS: Then repeat the question.

XQ. 1412. I ask what was your idea of your authority to execute such a release?

A. I cannot remember at this time.

XQ. 1413. You also put in evidence here a license and release purporting to cover approximately 5700 patents and other rights, which you executed and delivered to the United States in consideration of $100,000. I think you delivered it to the Navy Department?

A. Yes, sir.

XQ. 1414. Did you make any investigation of the subject before you executed that instrument?

A. I had numerous conferences with the Army and the Navy.

XQ. 1415. And your answer as to authority in that instance is the same as to the preceding question, is it?

A. No, I do not think so. I considered that the consideration there was the fair value under the circumstances.

XQ. 1416. That release took the place of the former one, did it not?

A. No, no, no, you have got that wrong, Colonel. The 5700 were on gun carriages and ammunition and surgical instruments and everything. The release was on what we were selling to the Chemical Foundation; it was on the chemical patents.

XQ. 1417. The chemical patents alone?

A. The 5700 were on the actual implements used in waging war.

XQ. 1418. Mr. Garvan, as to the license you have put in here, executed by the Chemical Foundation to the Navy Department——

A. You mean the big license, what we call the big license?

XQ. 1419. Yes. Do you not know that the negotiations in that regard began as early as January, 1920?

A. I would not be at all surprised.

XQ. 1420. While I am waiting for the correspondence, I call your attention to your evidence on Tuesday to the effect that you seized the gyroscope patents at the suggestion of Commander Norton. Do you not know that months after these patents had been seized by you the Secretary of the Navy asked you to advise him how he could get an assignment of these patents to the Navy Department?

A. No, I don't know that.

XQ. 1421. Or four of them at least?

A. No, I don't know that.

MR. ANDERSON: In order to complete the record on this subject for whatever value it may have, I would like to ask leave to introduce additional correspondence in addition to what counsel introduced on Tuesday. Have you any objection to its going in at this point?

MR. KRESEL: No; as to the order of the matter I do not object at all. I would just like to see what it is you are offering.

MR. ANDERSON: Here it is (handing papers). While you are looking it over I will go ahead with other questions, and when you finish looking it over, I will offer it.

XQ. 1422. Mr. Garvan, a gyroscope is an instrument used in the navigation of ships, is it not?

A. Yes, sir.

XQ. 1423. Can you state what relation such an instrument has to the objects and purposes of the Chemical Foundation as expressed and defined in its charter?

A. Only to help the Government.

XQ. 1424. To help the Government?

A. Yes.

XQ. 1425. Is there any such provision in the charter?

A. No. That is its purpose. The Navy asked us to take them over for their purposes, and we took them over—paid our money.

XQ. 1426. Then you cannot state that they have any relation to the objects and purposes of the Chemical Foundation as expressed in the charter?

A. I cannot tell you. I cannot tell a gyroscope from the back of a house. They told us it was necessary for the navigation of our Navy and our ships; that it was some balancing apparatus which—I don't know—helped their compasses, or something.

XQ. 1427. You do not really know anything about it.

A. (To XQ. 1426 continued.) ——that they were owned by the Germans, and they wanted to be saved from the Germans having control of our ships.

Mr. Anderson: I offer in evidence a letter to the Chief of the Bureau of Ordnance of the Navy, signed by P. A. Blair, dated January 23, 1920, subject: "Alien Enemy Patents."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 614." (*See Exhibits, Vol. III, page 1483.*)

Mr. Anderson: I offer in evidence copy of a letter dated February 11, 1920, addressed to Alien Property Custodian, signed by Josephus Daniels

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibt No. 615." (*See Exhibits, Vol. III, page 1487.*)

Mr. Anderson: I offer in evidence letter dated July 28, 1920, by Charles B. McVay, Jr., Rear Admiral of the United States Navy, addressed to Alien Property Custodian, subject : "Ownership of Patents."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 616." (*See Exhibits, Vol. III, page 1490.*)

Mr. Anderson: I offer in evidence a memorandum of the Chief of the Bureau of Ordnance, dated July 18, 1920, signed G. B. Wright, subject "Patents held by Alien Property Custodian, acquisition thereof."

The Court: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 617." (*See Exhibits, Vol. III, page 1491.*)

Mr. Anderson: I offer in evidence copy of letter dated January 14, 1921, addressed to the

Navy Department, attention of Commander A. L. Norton, signed J. R. Zimmerman, Division of Records of the Alien Property Custodian.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 618." (*See Exhibits, Vol. III, page 1492.*)

MR. ANDERSON: I offer in evidence letter dated January 17, 1921, addressed to Commander A. L. Norton, General Inspector of Ordnance, signed Chemical Foundation, by Lloyd VanDoren.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 619." (*See Exhibits, Vol. III, page 1493.*)

MR. ANDERSON: I offer in evidence memorandum dated January 19, 1921, "To: All Desks," signed "Charles B. McVay, Jr.," Chief of Bureau, subject, Purchase of license under patents from the Alien Property Custodian.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 620." (*See Exhibits, Vol. III, page 1494.*)

MR. ANDERSON: I offer in evidence copy of a letter dated January 19, 1921, signed Charles B. McVay, Jr., Rear Admiral of United States Navy, to the Chemical Foundation, Inc., attention of Mr. VanDoren.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 621." (*See Exhibits, Vol. III, page 1495.*)

MR. ANDERSON: I offer in evidence copy of a letter dated January 20, 1921, to Rear Admiral Charles B. McVay, Jr., signed by Chemical Foundation, Inc., by Lloyd VanDoren.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 622." (*See Exhibits, Vol. III, page 1496.*)

MR. ANDERSON: I offer in evidence memorandum dated 17th of February, 1921, to Bureau of Medicine and Surgery, signed Charles B. McVay, Jr., Chief of Bureau.

Received in evidence and marked "Plaintiff's Exhibit No. 623." (*See Exhibits, Vol. III, page 1496.*)

MR. ANDERSON: With the first endorsement, dated February 25, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-A." (*See Exhibits, Vol. III, page 1498.*)

MR. ANDERSON: And second endorsement dated March 9, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-B." (*See Exhibits, Vol. III, page 1499.*)

MR. ANDERSON: And the third endorsement dated March 11, 1921.

Received in evidence and marked "Plaintiff's Exhibit No. 623-C." (*See Exhibits, Vol. III, page 1500.*)

THE COURT: Admitted.

MR. ANDERSON: I offer in evidence letter dated March 28, 1921, from the Chemical Foundation by Lloyd Van Doren addressed to Mr. Charles B. McVay, Jr., Rear Admiral, United States Navy, as Plaintiff's Exhibit 624.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibt No. 624." (*See Exhibits, Vol. III, page 1501.*)

MR. ANDERSON: I offer in evidence letter dated July 19, 1921, from the Chemical Foundation, Inc., by Lloyd Van Doren, to Commander A. L. Norton, as Plaintiff's Exhibit 625.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 625." (*See Exhibits, Vol. 111, page 1502.*)

MR. ANDERSON: I offer in evidence letter dated December 15, 1921, to the Chief, Bureau of Ordnance, signed "Palmer, Davis & Scott," as Plaintiff's Exhibit No. 626.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 626." (*See Exhibits, Vol. 111, page 1504.*)

XQ. 1428. The firm of Palmer, Davis & Scott was the law firm of A. Mitchell Palmer, was it not?

A. Yes, sir.

MR. ANDERSON: I offer in evidence a letter signed by Charles B. McVay and A. L. Norton to Palmer, Davis & Scott, dated January 19, 1922, subject: Acceptance by Department of License from the Chemical Foundation, Inc., covering letters patent owned by it.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 627." (*See Exhibits, Vol. III, page 1505.*)

MR. ANDERSON: I offer in evidence letter dated January 21, 1922, addressed to Honorable Charles B. McVay, Rear Admiral, U. S. Navy, signed "Palmer, Davis & Scott," as Plaintiff's Exhibit 628.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 628." (*See Exhibits, Vol. III, page 1506.*)

MR. ANDERSON: I offer in evidence letter dated June 3, 1922, to Rear Admiral Charles B. McVay, Jr., signed "Palmer, Davis & Scott," as Plaintiff's Exhibit No. 629.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 629." (*See Exhibits, Vol. III, page 1506.*)

XQ. 1429. Mr. Garvan, I now read to you from your evidence before the Ways and Means Committee on H. R. 2706, page 342, as follows:

> By Mr. Kitchin: "Mr. Garvan, I ask you this, owing to the insinuations of the questions heretofore asked you. Why was it that men interested in this chemical foundation desired your connection with it as President and Director, and why was it that you were induced to accept it?
>
> "Mr. Garvan. Because for the last eighteen months, or ever since the war began, I have been engaged in uncovering these German corporations which were camouflaged under alleged American ownership, and this forced me to spend my entire time on the study of German business forces in this country.
>
> "Mr. Kitchin. You are in a position to know more about it than anybody else?
>
> "Mr. Garvan. I know all about it. I have had all the Albert stuff, and all that other thing has been passing through my hands, and they felt that it would be essential that I was there, so that if anything was attempted to be put over on the American industry I would be able to have the knowledge at my hand of their past so as to connect it with their present or future activities. It was only to allow the American industry to utilize the information which the war had collected in my hands."

Is that your testimony?

A. Yes, sir.

XQ. 1430. Mr. Garvan, your counsel put in evidence a few days ago, in the cross-examination of Mr. Metz, an original letter of Dr. Albert?

A. No, an original letter of Mr. Metz.

XQ. 1431. That Mr. Metz addressed to Dr. Albert. Where did you get that letter?

A. I don't know. I assume that I had it in New

York at the time that we were trying the Metz case. I suppose that is where it came from.

XQ. 1432. Have you any other of the Albert correspondence at this time?

A. I don't know.

XQ. 1433. If so, I would like to ask you to produce it.

A. If I have anything. I will look through anything that I have. I have nothing of any originals.

XQ. 1434. Have you copies of the Albert correspondence in your possession?

A. Oh, I have got a good many copies.

MR. KRESEL: You mean all correspondence signed by Mr. Albert?

XQ. 1435. As a matter of fact, the Albert papers were seized in New York, were they not?

A. No, not altogether. I never seized the Albert papers.

XQ. 1436. You did not?

A. No, no.

XQ. 1437. How did they come into your possession?

A. Why, they came into my possession through the Secret Service. People brought me copies of it. Most of it was published in the *New York World*. They seized part of the papers off Dr. Albert.

XQ. 1438. I mean, how did the originals come into your possession, the originals you produced the other day?

A. I could not tell you whether the Secret Service gave me that or whether it was gotten—no, it would not be Metz's files—or whether it was produced at the time of the trial and was a useless paper apparently that was not used at that time. I could not tell you.

MR. KRESEL: Colonel, I am sorry, but I do not remember what letter you are referring to.

THE WITNESS: Enclosing the newspaper clipping.

MR. KRESEL: Oh, I see. I remember it now. I had forgotten it.

XQ. 1439. How did you get hold of the papers of Dr. Schweitzer introduced in evidence?

A. Those papers of Dr. Schweitzer I took from his house after he was dead.

XQ. 1440. What was your position at that time?

A. Head of the Bureau of Investigation, New York.

XQ. 1441. Dr. Schweitzer was an American citizen, was he not?

A. On the surface.

XQ. 1442. Well, he was an American citizen?

A. He would not have been if he had been alive. We found his directions from the German Government to become an American citizen, to camouflage his action.

XQ. 1443. I did not ask you what you found. I asked you whether he was an American citizen or not?

A. Yes. Are you complaining of my taking Dr. Schweitzer's papers?

XQ. 1444. No, I only want to know the facts.

A. (No answer.)

XQ. 1445. There was used in the evidence here either an original or copy—I did not see it—of the testimony of Mr. Metz on a hearing before one of the officers of the Alien Property Custodian?

A. Oh, that is a copy.

XQ. 1446. Have you that?

A. That is one of five or six copies that have been around everywhere.

MR. KRESEL: I have it right here. There it is (handing papers to Mr. Anderson).

XQ. 1447. Your counsel has handed me a paper entitled "Office of the Alien Property Custodian, 110 West 42nd Street, New York City, in the matter of the General Drug Company, before Joseph H. Choate,

Esq., Examiner, September 23, 1918." Do you know where that document came from?

A. I don't.

XQ. 1448. You don't?

A. It might have come from me. It might have come from Choate. It might have come from Kresel. I don't know where it came from. We made lots of copies.

XQ. 1449. Another document with the same title headed "Statement of Herman A. Metz." Do you know where that came from?

A. No.

XQ. 1450. Another document with the same title headed "Deposition of Herman A. Metz," dated September 26, 1918. Do you know where that came from?

A. No.

MR. KRESEL: Will you have those either put in evidence or marked for identification, Colonel?

MR. ANDERSON: Yes, they can be marked for identification. I do not want them in evidence. You read from them.

MR. KRESEL: They are not signed documents. You will admit that. They are not originals.

THE COURT: What is the pleasure of counsel with respect to that? Do they want it in evidence?

MR. ANDERSON: I am through with them. They may be put in or not, as far as counsel may desire. I only wanted to know what the fact was.

THE COURT: The Clerk will then return them to Colonel Anderson.

XQ. 1451. Mr. Garvan, under the order issued by Mr. Polk of February 26th and the subsequent order of April 5th, the Alien Property Custodian is authorized to sell to the Chemical Foundation, upon such terms and conditions as the Alien Property Custodian or his authorized agent may deem proper, all letters patent,

trade-marks and rights under letters patent and trade-marks, including all profits and damages recoverable at law or in equity for the past infringement thereof, which the Alien Property Custodian may seize or may have seized under the provisions of said Trading with the Enemy Act and amendments thereto now or hereafter enacted, and which he from time to time shall determine to relate to the objects and purposes of said Chemical Foundation, Inc., expressed and defined in its charter.

Among the patents so assigned to the Chemical Foundation, I find the following, and I will ask you in what respect they relate to the objects and purposes of the Chemical Foundation as expressed and defined in its charter: First, under Patent No. 13,085, dated March 8, 1915, cigar mouthpieces?

A. Those are abandoned. Those were never issued.

XQ. 1452. That is not the question I asked you. I asked you what was the relation, how they related to the purposes and objects of the Chemical Foundation as described in its charter.

A. I could not tell you. It may have been a cigar mouthpiece for a man smoking a cigar with a gas mask, I don't know.

XQ. 1453. I won't take the time to call the numbers and dates of the patents because they can be identified in Exhibit G, but I will only call out the subject and ask you how it relates to the purposes and objects of the Chemical Foundation. Methods of making mouthpiece oval cigarettes?

A. I don't know.

XQ. 1454. Flexible metal hose?

A. I don't know.

XQ. 1455. Boarding machines?

A. I don't know.

XQ. 1456. Optical reversing system?

A. That certainly refers.

XQ. 1457. In what respect?

A. They are all chemical, optical lenses, and also, it is the highest development of the chemical art.

XQ. 1458. An optical lens is a part of the chemical art, is it?

A. Why, certainly.

XQ. 1459. Photographic projections?

A. Certainly.

XQ. 1460. You think they refer?

A. Surely.

XQ. 1461. Galilean telescope lens system?

A. Certainly that would be the same.

XQ. 1462. Acromatic spectacle glass?

A. Yes.

XQ. 1463. Magnifying glass?

A. Yes, sir.

XQ. 1464. Would you say that that referred to it?

A. Oh, yes. That is the highest development of the chemical art, the manufacture of those high-grade glasses.

XQ. 1465. Telescopes?

A. Surely.

XQ. 1466. You would say that related to the chemical business?

A. Surely.

XQ. 1467. Calculating machines?

A. I don't know what they are for calculating. They may have been for measuring chemicals. I don't know.

XQ. 1468. You don't know what they relate to?

A. No.

XQ. 1469. Optical instruments and certain specified scientific appliances?

A. Certainly.

XQ. 1470. Dental drilling machines. Would they refer to the chemical business?

A. I don't know, sir.

XQ. 1471. Field glasses?

A. Yes, sir; certainly.

XQ. 1472. Calculating and adding machines?

A. It might.

XQ. 1473. They might?

A. Might.

XQ. 1474. You cannot say that they do?

A. No, I cannot.

XQ. 1475. Surveying, photographic and optical apparatus. Does surveying apparatus relate to the chemical industry?

A. If it was glass.

XQ. 1476. Compass for ships and the like. Does a compass relate to the chemical industry?

A. I don't know.

XQ. 1477. Again, compasses for ships?

A. There may have been some chemical part of it. I don't know.

MR. KRESEL: Those were taken over on account of the Navy's request?

MR. ANDERSON: No, sir.

XQ. 1478. Gyroscopic compass?

A. Those are all the Navy.

XQ. 1479. Taken over on the 28th of March, 1919, and assigned in April, 1919?

A. Assigned when?

XQ. 1480. April, 1919. Gyroscopic compasses?

A. I don't know. I could not tell you.

XQ. 1481. Suspension and rotating apparatus and magnetic compasses?

A. I could not tell you.

XQ. 1482. Artificial horizon; method of gyroscopic control?

A. Is that part of the Navy's gyroscopic apparatus?

XQ. 1483. I don't know. Does that relate to the purposes and objects of the Chemical Foundation?

A. I think so.

XQ. 1484. You would say it related to the purposes and objects. In what respect? A gyroscopic control you would say was used on Navy ships, would you not?

A. The Navy reported to me that they thought it would be expeditious for the Chemical Foundation to take it over; and I did so. That is up to the Navy.

XQ. 1485. Do you know whether that was in the list in G-3 or not?

A. Whether that was what?

XQ. 1486. Do you know whether that was included in the list of assignment G-3 or not?

A. I do not know what assignment G-3 is.

MR. KRESEL: What is G-3?

MR. ANDERSON: That is the schedule with the assignment that you had up in June or July, 1919.

XQ. 1487. Balloon envelope material?

A. Yes, that certainly is.

XQ. 1488. That is certainly chemical business, is it?

A. Probably covered with dope which was all chemical to make it water-tight and fire-tight and all that.

XQ. 1489. Apparatus for cutting plate glass?

A. I don't know. They may have had plate glass used in chemical manufacture; I do not know.

XQ. 1490. Ice cutting machine?

A. I don't know. That is probably for ships of the Navy. I don't know.

XQ. 1491. Process and apparatus for construction of slabs of artificial stone?

A. Surely, that would be chemical.

XQ. 1492. That would?

A. Certainly. It would be a chemical process.

XQ. 1493. Press for making briquettes and the like?

A. Surely, that is all chemical.

XQ. 1494. That is a piece of machinery, isn't it?

A. What?

XQ. 1495. Press for making briquettes?

A. I suppose part of a process for making briquettes.

XQ. 1496. Prop for mines?

A. I don't know. I assume that was the Government's.

XQ. 1497. You assume?

A. Yes, I don't know.

XQ. 1498. Making fish sausage?

A. I don't know. I should think it would be chemical.

MR. KRESEL: Probably a fertilizer.

XQ. 1499. Apparatus for moistening and warming rooms or apartments?

A. I don't know. I suppose that is for the apartments of ships.

XQ. 1500. Why do you suppose that is for apartments of ships, Mr. Garvan?

A. Because I don't think we would be looking for it as a chemical patent. You can't tell from that description. You can't tell a thing from that description.

XQ. 1501. How about a centrifugal machine?

A. You can't tell.

XQ. 1502. What?

A. It may be a centrifugal machine for stirring vat colors, to make the vat colors. You can't tell. I can't tell.

XQ. 1503. That is part of the machinery of a plant, is it?

A. Undoubtedly, it would be. Mr. Holdermann testified as to lots of apparatus and machinery. I can't tell from what you read off. I would have to get the patent and then I would have to get an expert.

XQ. 1504. I see. What did you have before you when you executed that assignment?

MR. KRESEL: Which assignment?

MR. ANDERSON: The assignment of April 10th, in which most of these things I have read were embraced.

A. Gyroscopes, all those things, were not in there. I had a list of the patents made up by the people under me.

XQ. 1505. But this is taken from a schedule in the exhibit introduced in evidence here and that is a copy of the schedule that accompanied that list?

A. I don't know whether it is or not. I don't know anything about it.

XQ. 1506. Did you ever examine any of these patents personally?

A. Oh, yes.

XQ. 1507. How many of them?

A. Oh, I can't tell. As they were applied for and it became a matter of the business of the Foundation, I would look at them.

XQ. 1508. That was after they were assigned?

A. Then we would keep a chemist there.

XQ. 1509. I am talking now of the time that the assignment was made.

A. Did I personally pass on the chemical application of these things? Of course not. In the first place, I am not a patent lawyer. In the second place, I am not a chemist.

XQ. 1510. You signed these assignments with these large lists attached as they were brought to you, did you not?

A. Certainly, after consultation with the men of my force.

XQ. 1511. I will call attention to one or two more and shorten it: Construction of frozen walls for shafts of mines. What would be the connection of that?

A. That would undoubtedly be an ammonia proposition, a frozen proposition. That would be a chemical proposition.

XQ. 1512. A self-propelled airship?

A. I think that would be purely chemical.

XQ. 1513. An airship is purely chemical business?

A. Self-propelled——

XQ. 1514. An airship is purley chemical business?

A. Probably propelled by some chemical.

XQ. 1515. A patent for a self-propelled airship you would regard as part of the business of the Chemical Foundation?

A. Why, a most essential part. If they had a self-propelled airship, where would we be in our safety?

XQ. 1516. Screw propellers?

A. What about them?

XQ. 1517. Would you say that those related to the Chemical Foundation?

A. It would depend upon what they were used in connection with. If they were used in connection with a self-propelled airship propelled by some chemical, I certainly think so. I don't know.

XQ. 1518. Propelling and steering apparatus for baloons?

A. Surely.

XQ. 1519. Armoured aerial machine?

A. Surely.

XQ. 1520. A toy airship?

A. I do not suppose that means an airship for a

child to play with. I suppose it means one of these airships that the Government has been working on so many years and spending so much money on that will go by themselves.

XQ. 1521. Safety anchors for airships and the like?

A. There probably is something chemical about them.

XQ. 1522. Mr. Garvan, do you know anything about them at all?

A. No, but I trust my own Government; I trust the people that picked them out, and I do not criticize them at the behest of foreigners.

XQ. 1523. I see. I will ask you this question before I take up the next point: How did you determine that these matters related to the purposes and objects of the Chemical Foundation? What procedure did you follow?

A. I relied upon the advice of my assistants and consulted with the chemists and people in the industry, and so forth, and so on, who were patent lawyers, who examined the patents.

XQ. 1524. It appears in the evidence here that copies of the patents were consulted by Messrs. Barrows and Squair, and then that the papers for seizure and examination of title was made by Mr. Gordon. Are those the gentlemen to whom you refer as having relied upon?

A. No, sir, not altogether.

XQ. 1525. Whom else did you rely upon?

A. Mr. Hoguet.

XQ. 1526. Relied upon Mr. Hoguet. Mr. Hoguet went over the patents. The testimony is that he eliminated what he wanted to eliminate. I think that is Mr. Gordon's testimony.

XQ. 1527. I am asking you now what you did?

A. They got the list, in the first place, from the

Federal Trade Commission, who had had I do not know what amount of work done to pick out the chemical patents.

XQ. 1528. But you do not know——

A. They were in consultation with everybody who was fighting the war. The Army was in there——

XQ. 1529. Hold on; one minute; I am not asking you what they did.

A. Oh, I did not.

XQ. 1530. I am asking you what you did.

A. I can not determine what a patent covers, nor am I a chemist.

XQ. 1531. Whom did you rely upon; name the specific persons in reaching that determination?

A. Mr. Hoguet and Mr. Gordon and the Navy and the Army, and the other things where they definitely came to me.

XQ. 1532. I call your attention to Defendant's Exhibit No. 91, entitled "Statement of Income and Expenses of the Chemical Foundation."

A. Exhibit 91, yes, sir.

XQ. 1533. Did you make that statement?

A. It was made under my direction.

XQ. 1534. Did you yourself check it with your books of account?

A. No, sir.

XQ. 1535. Are you an accountant?

A. Yes, sir.

XQ. 1536. Did you check it with the original records?

A. I beg your pardon?

XQ. 1537. Did you check it with any original records?

A. With the original records of the Foundation?

(No. Q.'s 1538-1557, inc.)

XQ. 1558. Yes.

A. No, sir.

XQ. 1559. Your testimony on that statement was based entirely upon what was told you by your accountants, was it not?

A. Practically. I have been over each of those items in the management from time to time. That don't mean I can swear that they are correct to the penny, or anything of that kind. They were made up under my direction from our books.

XQ. 1560. Mr. Garvan, do you know anything about that statement except what was told you by your accountants?

A. I know in general that it would be correct, but I cannot know that it is definitely accurate.

XQ. 1561. You can not know that it is definitely accurate?

A. Mr. Buffum could testify to that.

XQ. 1562. I now refer you to statement Defendant's Exhibit 91-A.

A. Yes, sir.

XQ. 1563. Do you make the same statement as to that as you made to Defendant's Exhibit No. 91?

A. No, I have a good deal more acquaintance with that. I know most of the number of copies and what they cost; but at the same time I am not equipped to swear that that is a definite and accurate statement.

XQ. 1564. You are not equipped to swear to that?

A. No.

MR. KRESEL: Colonel, that was brought out on his direct, you will recall, and I said that I had the gentleman who made them up in Court and would call him.

MR. ANDERSON: The evidence has gone in, however, and I have got to develop that, and then I am going to make a motion, Mr. Kresel. It is just to develop that.

MR. KRESEL: In other words, you do not need to waste time on it.

XQ. 1565. I will ask you if you are prepared to make the same general statement as to each of these statements.

A. Certainly. They were prepared under my direction. I went over them after they were prepared, and in some instances checked up the calculations which would appear upon the face of them; but as to their bookkeeping accuracy, of course, I cannot testify.

XQ. 1566. As a matter of fact, these statements are taken from a report of your expert accountants, are they not?

A. No, they are taken from our books.

XQ. 1567. I mean, these particular statements are part of a report of your expert accountants in that large manuscript form we had here, are they not?

A. Not all of them. You did not have all those calculations.

MR. ANDERSON: If your Honor please, I do not want to take up time to cross-examine Mr. Garvan as to these statements and matters appearing therein in view of his statement, because naturally he would have to answer that he did not know as to the accuracy of those various statements, and it would be a waste of time, in my judgment. Therefore, I shall make a motion to strike out each and all of these exhibits and all of the evidence of the witness relating thereto, unless counsel for the defendant produces a witness who can testify to their accuracy from the records, in which event I have no objection to their remaining in the record to be properly supported by other evidence, and then reserving the right to cross-examine as to them.

MR. KRESEL: I have already stated, and I re-

peat again, that I shall call the accountant who made them up.

THE COURT: This was all gone over at the time the papers were put in evidence during the examination-in-chief, and notice then given of such motion if the defendant failed to call the accountant. Defendant now says that it will call the accountant.

MR. ANDERSON: I do not want to insist upon the motion at this time. I merely want to make it to make my record right, to the end that the situation may stand, and I do not want it stricken out if it is going to be supported.

THE COURT: Very well.

XQ. 1568. Mr. Garvan, you stated I believe, you had only had one infringement suit on the part of the Chemical Foundation?

A. One that came to court. We have had lots of them that were infringers.

XQ. 1569. Your accounts will show, when the accountant goes on the stand, all of those facts, will they not?

A. Surely.

XQ. 1570. And what they settled for, and everything?

A. Everything, yes, sir.

XQ. 1571. If that is the case, I will not bother to ask you about it. What arrangement have you for checking up the business of the licensees, and what check have you made upon their business to see if they report their earnings under the licenses, or whether they are infringing the patents covered by the licenses?

A. They allow our accountants to go over their books each quarter. We have full access to all their books.

XQ. 1572. And your accountants do that checking, do they?

A. Yes, sir. They render the account at the end of the quarter. For instance, at the end of this quarter, which ends July 1st, they have until August 1st to account, and then we are permitted after August 1st, after they have rendered their account, to go to their books and check up the accuracy of it, if we have any doubt about it. We have no trouble with that.

XQ. 1573. Did not some of the licensees refuse to pay for licenses to the Chemical Foundation, licensees of the Federal Trade Commission?

MR. KRESEL: When?

MR. ANDERSON: After the transfer of these patents.

A. I do not think so.

XQ. 1574. You do not recall whether they did or not?

A. It may have taken some education—I do not remember any trouble. We had some trouble at the beginning of this suit, but only for a little while. I might. You may refresh my recollection on that.

XQ. 1575. Your accountants do not undertake to check the processes of manufacture, of course?

A. Oh, we could not do that, no.

XQ. 1576. You have never undertaken to check that at all, have you?

A. Oh, it would be impossible for us to do that. Most of them have processes, have them sealed, you know; you couldn't.

XQ. 1577. In your answer, clause XLII, paragraph (i), you say:

> "That the principal means whereby said German cartel, trust, or monopoly and the German Government accomplished their said control, domination and oppression, and the principal barrier which stood in the way of the development of an independent and self-sufficient organic chemical industry in the United States, consisted of the

United States patents and patent rights then owned and possessed by German nationals.''

Is that true?

A. Certainly.

XQ. 1578. You swore to that answer, did you not?

A. Yes, sir; I think so.

XQ. 1579. Again, in clause LII, pages 40-41 of your Answer, you say:

''In order effectively to carry out the intent and terms of said sale and the objects of its charter, the defendant at great expense catalogued and circulated among manufacturers and others who might be interested therein, lists of the patents and other rights so sold to it by the Alien Property Custodian as aforesaid, together with information concerning their availability and usefulness. In cases of inventions which it seemed especially important to have rapidly and thoroughly developed, from the standpoint of the industry, public welfare, or common defense, it caused special study and research to be conducted in order to determine the availability thereof and caused its findings to be made known to the industry, and urged American concerns to manufacture under such patents. As a result thereof, to this date licenses under 422 of the patents so sold, assigned and transferred to it have been issued, non-exclusively, to a large number of American manufacturers, who have operated and continue to operate thereunder, and who, in the course of said operations, have expended millions of dollars in research and experimentation and the erection of necessary plants for the exploitation of the patents so licensed to them. Many of the chemical products which are now abundantly manufactured in the United States under such licenses were not heretofore produced in the United States, or were produced only in quantities wholly insufficient for domestic consumption and the needs of the common defense. Largely as a result of the licensing and other activities of the defendant, American

manufacturers are now able to provide for approximately ninety per cent. of the needs of the people of the United States for colors and dyes, as to which, prior to said war and the sale, assignment and transfer of said patents to the defendant, the American people were entirely dependent upon importations from Germany. Many of the products now abundantly produced under said licenses are chemicals which during the late war demonstrated their importance as basic elements of explosives and of modern defensive or offensive warfare, and others are of great value as therapeutic agents, and the ability to produce such chemicals abundantly and quickly is essential to the common defense and general safety of the United States and its people."

Is that true?

A. Yes, sir.

XQ. 1580. You were asked as to the clauses in the original assignment and subsequent assignments, to the effect that the assignments were absolute without reservation on account of anything in the charter or by-laws of the Chemical Foundation or otherwise; but your attention was not drawn to your general assignment, or attempted confirmatory assignment, dated the first day of March, 1921, which is in the record as Exhibit I of the bill of complaint, and has been introduced in evidence. I note that this clause is not in this assignment.

A. No, sir.

XQ. 1581. Do you not know that it was stricken out on the express objection of the then general counsel of the Alien Property Custodian, Mr. Boggs?

A. Yes, Mr. Boggs said he thought the fears of the patent lawyers were unfounded.

Mr. Anderson: I move to strike that out, if your Honor please. What Mr. Boggs said is a matter of record.

The Court: Motion granted.

THE WITNESS: I beg your pardon.

XQ. 1582. It was stricken out on the express objection of Mr. Boggs?

A. My own lawyer, Mr. Boggs.

(No Q.'s 1583-92, inc.)

XQ. 1593. He was your counsel as Alien Property Custodian at that time?

A. Yes, sir. It was put in on the advice of my counsel in the first place, and taken out at the advice of later counsel.

MR. ANDERSON: I think that is all I want to ask the witness.

MR. KRESEL: I have only two or three questions, your Honor, if I may finish with the witness.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 1594. Mr. Garvan, something was said, I think, in your cross-examination about the bills that were pending before Congress in the matter of protecting this chemical industry. I think you said that there was a dye embargo.

A. Called a selective dye embargo.

RDQ. 1595. I would like to ask you for how long a period that remained?

A. It took different forms in the wording of the bill; but the idea of selective embargo remained until September 10th, 1922, the date that the present tariff bill went into effect.

RDQ. 1596. You were asked this morning whether the Chemical Foundation——

MR. ANDERSON: Mr. Kresel, I did not hear what you just asked the witness. Would you mind repeating it to me off the record?

(Statement by Mr. Kresel off the record.)

MR. KRESEL: Suppose you explain it, Mr. Garvan.

THE WITNESS: After the war was over the President abolished the War Trade Board, preserving the Chemical Section, and transferred it to the Secretary of State's office in order to protect this industry, and the Secretary of State's office, under the President's directions at that time, allowed in what dyes and chemicals we did not make. Then Congress continued appropriations for that work and then passed a three months' temporary selective embargo of this kind while they were dickering about a permanent bill——

MR. KRESEL: Permanent tariff?

THE WITNESS: —and then at the end of that three months the joint resolution was again extended until the passage and going into effect of the big tariff bill.

MR. ANDERSON: The contents of those things are all acts of Congress, are they not?

MR. KRESEL: Yes.

THE WITNESS: Well, of course, they were acts of the President. The President did it under the war power of continuing the War Trade Board and sending it over under the Secretary of State to enforce until such time as Congress put it into the—I think it is called the Emergency Tariff Bill, the first one.

RDQ. 1596. (Continued.) You were asked this morning as to whether the Chemical Foundation charged an import royalty on the importation from countries other than Germany of chemicals and dyes manufactured under the patents conveyed by the Alien Property Custodian to the Chemical Foundation?

A. Yes, sir.

RDQ. 1597. My question is whether, in point of fact, any such chemicals or dyes have been imported

from any other country; either England or Switzerland, I think were the two that were mentioned. In other words, does England or Switzerland manufacture any of those dyes under these patents?

A. No, sir. The only possible modification of that might be that some of the reparations dyes which Italy got, for instance, they have re-sold into this country; but none of the goods manufactured in countries other than Germany have come in here which come under our patents.

RDQ. 1598. You were asked this morning whether you did not know at the time of the sale of these patents to the Chemical Foundation that several manufacturers were operating under Federal Trade Commission licenses and actually making salvarsan, and you stated that you did know that. Do you recall that?

A. Yes, sir.

RDQ. 1599. Did you know at that time that by reason of the imposition of a five per cent. royalty under the Federal Trade Commission license any manufacturer operating under such a license, should the Germans be permitted to import here, would have a differential of twice the amount of the royalty that he was paid?

MR. ANDERSON: If your Honor please, I object to that question as purely leading, and not only that, but it is an argument that counsel can make from the record. The record is all here, the Federal Trade Commission licenses. It is a leading question so framed that the witness can answer yes to a long argument, to confirm an argument on the record. I object to it.

MR. KRESEL: I admit that it is leading, your Honor, and I think I have a right on re-direct to lead him on questions that were brought out on cross-examination. However, I did not intend to

make it leading, because the witness does not need to be led on this matter.

THE COURT: Read the first few words of the question.

(First few words of question repeated as above recorded.)

THE COURT: Is it a matter of argument?

MR. ANDERSON: No, sir.

THE COURT: Then it is a question of fact.

MR. ANDERSON: "Did you know at that time"——

THE COURT: Yes.

MR. ANDERSON: But if he says "yes," then all the balance of it is argument.

THE COURT: You said two things; first, it is leading. On that ground your objection is well taken. Second, you stated it was a matter of argument.

MR. ANDERSON: What I mean is it is a matter of argument from the existing records.

THE COURT: But it is not a matter of argument as to whether this witness knows it.

MR. ANDERSON: I meant the subject matter of the question was a matter of argument.

MR. KRESEL: Do you press the objection that the question is leading?

MR. ANDERSON: Yes.

MR. KRESEL: All right.

RDQ. 1600. Did you or did you not know at that time of the effect of the imposition of this royalty fee with respect to the ability of the American manufacturer to compete with the German importer?

A. I certainly did.

RDQ. 1601. And what did you know about it?

A. I knew that the German importer would have a tremendous advantage, of course.

RDQ. 1602. You were questioned this morning

(3)

No. 512. 127

In the Supreme Court of the United States

OCTOBER TERM, 1935

UNITED STATES OF AMERICA, APPELLANT

v.

THE CRIMINAL FOUNDATION, INCORPORATED,

APPELLEE

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

TESTIMONY OF FRANCIS P. GARVAN

about fees paid to lawyers, especially a fee paid to Judge Ingraham. Who fixed that fee originally?

A. I think I did. I think he rendered his bill to me and I think I approved of it.

RDQ. 1603. What was the case?

A. I am not sure whether that went before the Board of Directors first or not.

RDQ. 1604. The board of directors of what company?

A. The Botany Worsted Company.

RDQ. 1605. What was the nature of the action in which this bill for services was rendered?

A. That was a bill which involved the whole question of the title of the Alien Property Custodian to a nine million dollar corporation.

RDQ. 1606. Was the case tried and appealed and did it go to the United States Supreme Court?

A. It went to the United States Supreme Court and Judge Ingraham there argued it, arguing it also in the Court of Appeals, as I remember. I know he did. I was present in the Supreme Court.

MR. KRESEL: That is all. Colonel, here is this list of the Advisory Committee. It appears in the minutes, so we do not need to supply it.

(Witness excused.)

JOSEPH H. CHOATE, JR.

JOSEPH H. CHOATE, JR., called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Please give your full name and address?

A. Joseph H. Choate, Jr. My business address is 60 Wall Street, New York City.

Q. 2. And you are by profession a lawyer?

A. Yes.

Q. 3. How long have you been admitted to the Bar?

A. Since 1902.

Q. 4. Were you at any time connected with the Alien Property Custodian's office?

A. I was, unofficially.

Q. 5. Beginning when?

A. Beginning in the early part of 1918. I can not place the exact date; but I think it was somewhere between the end of February and the middle of March.

Q. 6. And for how long a period did you continue to be associated with that office?

A. Until the spring of 1919, again at an indefinite date, because I gradually wound up my work there and began to take up my ordinary law practice again.

Q. 7. You say "unofficially" you were connected. Were you under a salary?

A. No.

Q. 8. Did you receive any compensation for your work?

A. None whatever.

Q. 9. How did you come to be connected with the office? Were you asked to?

A. I was asked by Mr. Garvan to undertake the work of the Bureau of Investigation as far as it concerned the chemical industry in the United States.

Q. 10. What was the nature of the work that you performed during this period that you were connected with the Custodian's office?

A. The object of the work was to discover as far as possible all German ownership in American chemical enterprises and the nature of the work was the carrying out of every form of investigation which suggested itself and was possible looking toward that end.

Q. 11. Will you briefly describe the nature of the investigation, just what you did, briefly?

A. When I came there, the Bureau of Investigation had already been going for several months and there was already a considerable mass of information in the office. My first task was to acquaint myself with that information.

For example, I found that three of the representatives of the "Big Six," the Kalle Company, the Berlin Company and the Bayer Company, had all been taken over, and the papers relating to them were in the office. There was also a considerable mass of other material which could be studied and which gave leads in various directions.

These papers suggested various informants who could give further information on general subjects and also suggested literature from which information could be derived; and I proceeded to read that literature and consult those informants.

As leads were gradually developed suggesting the existence of German ownership in various American companies, I would communicate with those companies and ask them to send a representative to the office with his books. Those requests were almost always complied with; and an examination of the representative and of the books would reveal further information which, spreading like a wave, suggested in turn new leads and new possibilities from which information could be derived.

Q. 12. And were you engaged in the work exclusively during the whole period that you were with the Alien Property Custodian?

A. In nothing else from the time I went in until certainly the first of March, 1919.

Q. 13. Did you embody the result of your investigations in a report?

A. I did.

Q. 14. Is that report of yours contained in Defendant's Exhibit No. 30?

A. I think that is the number.

Q. 15. You are familiar with Mr. Palmer's report?

A. Yes. The chemical chapter of that report is substantially the report I made to Mr. Palmer for the purpose; and it includes not only the results of my investigations, but also the results of the investigations by the Bureau of Investigation before I had a part in it.

Q. 16. And is the report a true and correct report of the results of your investigations?

A. It is. It was as accurate as I could make it. I have not given you by any means the full sources of information which we had, if you want a fuller statement of them.

Q. 17. I quite understand, but I think it is sufficient; and if the Government desires any further information, of course, you will give it. It has been testified here that you took part in certain conferences preceding the sale of the patents by the Alien Property Custodian to the Chemical Foundation. You have been in court and heard the testimony?

A. I have.

Q. 18. Did you take part in such conferences?

A. I did.

Q. 19. At such conferences do you recall whether the question of the price to be paid for these patents was discussed?

MR. ANDERSON: Mr. Kresel, would you make it specific as to date, time, and so forth?

MR. KRESEL: Yes, I will withdraw the question.

MR. ANDERSON: Without having us go all over it again. It will save us time.

Q. 20. Were you or were you not present at any

conferences at which the question of the amount to be paid for these patents was discussed?

A. I should say I was present at several such conferences.

Q. 21. Will you be good enough to give us your best recollection of the first conference when the question was discussed, giving the date?

A. I could not possibly give the date.

Q. 22. Approximately?

A. I should say it must have been between the 27th of January, when the conference was held in the Washington office of the Alien Property Custodian, and the 4th of February, when the meeting of the Manufacturing Chemists' Association was held to consider the plan.

Q. 23. Before I ask you about those conferences, did you or did you not appear at a meeting of the Manufacturing Chemists' Association with reference to the disposition of these patents?

A. I did.

Q. 24. Can you give the date when you so appeared?

A. I could not, from my own unaided recollection. But I believe that the minutes of the association show that it was on February 4th, 1919.

MR. KRESEL: Are these minutes in?

MR. ANDERSON: Yes, sir.

A. (Continuing.) I have a definite recollection that it was about that time, but I could not give it precisely.

MR. ANDERSON: I think the date is correct, but it will be verified by the minutes.

MR. KRESEL: Very well then.

Q. 25. Directing your attention particularly to the question of price, please state whether or not you expressed any opinion at any of these conferences as

to whether the price of $250,000 was or was not a fair and reasonable consideration for the patents?

A. I undoubtedly did.

Q. 26. Will you state what you said upon the subject?

A. I expressed the opinion that the price of $250,000 was a fair and reasonable price under the circumstances.

Q. 27. Now I ask you to state what were the circumstances and what were the considerations that weighed with you in stating that in your opinion $250,000 was a fair and reasonable price for these patents?

A. Those considerations were of two general classes. The first class related to the precise conditions of the sale which was being undertaken. Those, of course, included the fact that the sale was to be made subject to an obligation to issue non-exclusive licenses and on reasonable, equal terms to all qualified American manufacturers; and the obligation to license the Government under all the patents; and a limitation of the profits, of the use of the profits, I may say, so that all over six per cent. on all the stock of the proposed corporation should be used for the advancement of science. Those three considerations went to this particular sale.

But there were a number of other considerations relating to the value of these patents that made me feel the value of them, outside of the question of this sale altogether, was very low—the fair value was very low. In the first place, my understanding was, and it had been confirmed from some experiences I have had in my own professional work, that all chemical patents were particularly open to two defects or two difficulties, one was the exceeding difficulty of making a description which would hold water when the patent came to be tested, the other was the extreme ease with

which chemical patents are superseded, the rapidity of the advance of chemical science, and the frequency with which a valuable chemical disovery is improved upon so that it ceases to be of any value whatever.

Those considerations applied both to product patents and to process patents. Then in the next place I realized very strongly that these were group patents which had not been used in the United States, I think with the exception of some of the pharmaceuticals, and even those pharmaceuticals I think were chiefly among the Bayer patents which had been sold to the Grasselli Company. I knew of none which had actually been used in this country.

My understanding was that the value of a patent depends absolutely upon the place where it is to be used. You may have a patent of enormous value in one place which is utterly worthless in another. For example, the arc patents for nitrogen fixation were of vast value in Norway where cheap water power was available, were of no value whatever in Spain, and were probably of no value in this country. Where none of the patents had been used, I knew that every purchaser would be confronted with the certainty that he would have to guess as to the adaptability of the patent to our conditions, whether we had the facilities, the power supply, the labor habits, the manufacturing habits, and above all the supply of technical skill to work it.

The next great consideration and the last of these factors I have just named was that all these chemical patents relating to the organic chemical industry dealt with one of the most difficult commercial undertakings that I knew anything about. They required a kind of manufacturing skill which my investigation led me to believe was not present at all in the United States, and I found that such members of the industry as I consulted with held the same view. They required for

successful exploitation a supply of highly trained chemists, not only laboratory chemists but manufacturing chemists and trained laborers and foremen, who simply were not to be had here. It was my view that the value of these patents depended entirely upon the possibility of making money out of them, but you could not make money out of them unless you could manufacture cheaply, and that you could not manufacture cheaply unless you knew the job. That emphasizes the importance of the fact that these patents did not carry with them what has been described as the know-how.

On that I want to elaborate a little. In the ordinary case where anycne is buying a patent—and supposing now he is not buying it merely to get rid of a nuisance—he buys with the patent the experience of the previous owner, who is usually the inventor.

MR. ANDERSON: One minute, Mr. Choate. If your Honor please, I do not wish to interrupt this gentleman, but I do not think Mr. Choate has qualified as an expert, and I do not think he would claim to be an expert on patents. He is obviously speaking from hearsay and, in the next place, he is arguing this case from the witness stand. I do not think the question called for any such extended reply as this, and if I thought so I certainly would have objected.

These matters are matters of technical knowledge, and if we are going to have them testified to I think we should bring somebody here who has the technical knowledge, that we may get the foundation of the information on the subject. I do not want to interrupt Mr. Choate because his statement is a very interesting one to me; but I do think this is outside the testimony in the case.

THE COURT: I do not want to hear you, Mr. Kresel. I think not. As I understand your allega-

tion of the bill, Mr. Choate is one of those persons charged with conspiracy.

MR. ANDERSON: Yes.

THE COURT: He is now asked for his reasons and the facts upon which he based or reached the conclusion that $250,000 was a fair value, and he has told why he has thought it was the fair value under the circumstances and conditions imposed upon the purchaser. He is now proceeding to tell why he reached the conclusion it was a fair value apart from those conditions. You may proceed, Mr. Choate. Objection overruled.

A. (continued) Not only that, but he usually takes care to insert in the contract a provision entitling him to the free possession of improvements, since such improvements frequently destroy the entire value of the invention purchased.

Now, in this case the purchaser will be buying not merely the bare patent, without such assistance from the inventor, but he will be buying the extreme hostility of the inventor; that is, the extreme hostility of the mind most likely to produce the next invention, the next step in the art, which might render the patent purchased utterly valueless.

This again led to another consideration which to my mind led us to value the patents adversely. That is the certainty of litigation. No man could possibly buy these patents without being entirely certain that after the war he would meet a litigation to test the title to the patents which he purchased. I do not say that for a moment it entered into my mind that he would meet the particular sort of litigation which has arisen in this case, but I felt sure that the Germans would some day bring a suit.

Referring again to the reasons why I considered the absence of the know-how of such vital importance, my understanding of the manufacturing which had to

be carried out under these patents was this—and I think it is a matter of considerable consequence: The manufacture of organic chemicals is entirely different from ordinary mechanical manufacture. When a man makes plow-shares or chairs or any other manufacture requiring merely mechanical processes, he knows to a certainty that barring a small proportion of spoiled parts he will get 100 per cent. of his raw material in the form of finished goods. The manufacture of organic chemicals, particularly dyes, is something quite different. It consists in a series of consecutive processes in each of which a chemical reaction destroys all of the preceding raw materials, the materials which were raw materials for the preceding steps, and substitutes a new lot. Each of those processes is controllable by skill, the skill of those who have the knowledge of such manufacture. So that the yield of each step may run anywhere from 10 to 100 per cent. of the theoretical.

My understanding was that it was frequently the case in the manufacture of dyes that 9 to 12 of such consecutive processes had to take place and that unless you had a high degree of technical training among your workmen and your foremen, as well as your chemists, you might and probably would lose 90 per cent. in each step, so that by the time you had got 10 per cent. of 10 per cent. of 10 per cent. of 10 per cent., carrying it through nine steps, you would have almost nothing left; that this technical training did not exist in this country, did exist in great quantity in Germany, would have to be built up here by slow and gradual steps, and that until it was built up there was no possibility of effective competition with Germany and, for that matter, with Switzerland, where such skill also existed.

In addition to this my attention was directed to the fact that patents on chemical products or processes

are frequently valueless unless effectively grouped, that any one of these patents, any one patent covering a given process or a given product, unless protected by what might be called flank patents covering the obvious and less obvious probabilities of invention on the same line, would become absolutely worthless. We had no means with which to make the extremely exhaustive and expensive survey which would have been necessary of this vast mass of patents to determine whether they contain such groups, groups which would furnish adequate defense or the means of adequate defense.

In addition to all this, considering the patents from the point of view of something which might be sold at public auction or public sale, I had in mind the fact that the Alien Property Custodian was determined not to sell to anyone who could possibly become by the purchase a monopolist to any extent, and that this cut out from among the possible purchasers most of the strong chemical manufacturers in the country who would have been most interested in the possible purchase. He was also determined not to sell to a speculator, and while I knew it was almost impossible to detect a speculator, it also made it extremely probable that some possible bidders would be excluded.

I think that covers most of the grounds that I had in mind at that time. There was one more—or two more, really. One may be illustrated best by the case of Haber process patents. That was the fact that the entire value of these patents to any purchaser depended on the legislation of the United States; the very enactment of the Trading with the Enemy Act had in a sense cut out the monoply value of these patents and set up a bunch of possible competitors for any purchaser. In the case of all the process patents the termination of the war would let loose the whole of the German competition upon the purchaser of the patent.

In the case even of the product patents the purchaser would have to face the results of German research, which were totally unknown, during the war. So that unless strong protection of some sort by way of tariff, selective embargo or otherwise were enacted, I felt that no purchaser would feel he was getting much of any value in any one of these patents.

In the case of the vat dye patents there was the further fact that one whole group of such patents had already been sold to one purchaser, the Grasselli Chemical Company. I should say each of the Big Six in Germany developed its own line of those dye patents, each in a sense capable of filling the whole field of the work required from those dyes. It so happened that the indanthrene dyes of the Badische Company had become the most important. They were the first on the market, and as long as all the six German companies were in one combination it did not matter to them which was pushed with the greatest success in our markets. They were perfectly content, I assume, to have the chief value of the industry concentrated in the indanthrene colors of the Badische Company. But six separate sets of those vat dyes existed, each covered by a set of patents taken out by each of the six companies. My understanding was that the so-called algol vat colors of the Bayer Company could be developed to do all the work of the Badische dyes, the indanthrene dyes. These algol dyes had become separated from the mass and were in the hands of a strong company. They afterward went to the Chemical Foundation. Accordingly, I assumed those patents were less valuable to any purchaser by reason of the fact he had to compete not only with the possibilities of import from Germany and Switzerland, but also with manufacture under the algol patents by the Grasselli Company. I think that covers the ground.

Q. 28. You stated that you did appear before the

Manufacturing Chemists Association. Will you state whether or no you also were in communication with the American Dyes Institute?

A. Yes.

Q. 29. You know Mr. Hoguet?

A. I do.

Q. 30. Did or did not Mr. Hoguet participate in these conferences?

A. At the meeting of the Manufacturing Chemists Association on February 4th and at the meeting of the American Dyes Institute on February 7th Mr. Hoguet was present in each case and both he and I spoke explaining the plan for the Chemical Foundation. That was in 1919.

Q. 31. Do you know whether the suggestion for the sale of these patents, which was subsequently made to the Chemical Foundation, was first made by you and Mr. Hoguet, representing the Alien Property Custodian, or by representatives of the industry?

A. Do you mean for the specific sale, or for any sale?

Q. 32. For any sale.

A. I think it was made by the Alien Property Custodian representatives. I never heard a suggestion of it from outside until after it had been very completely discussed inside the office.

Q. 33. Mr. Choate, have you any interest in any chemical concerns?

A. I think not.

Q. 34. Did you at the time of this sale?

A. I did not. Wait a moment, I may have had a part ownership in some stock of the American Agricultural Chemical Company. That is purely a fertilizer concern which has nothing whatever to do with chemistry proper or organic chemistry in particular.

Q. 35. Did that concern have anything to do with the Chemical Foundation?

A. Nothing whatever.

MR. KRESEL: Colonel Anderson, you may examine Mr. Choate. And I say now I shall raise no objection to your examining him on cross on any subject, even though I did not cover it in my direct.

MR. ANDERSON: I do not think this would take me more than half an hour. I have my notes over at the office. I did not expect to reach Mr. Choate today for cross-examination. I will send for them.

THE COURT: Can we meet an hour earlier in the morning? Would that be agreeable to counsel?

MR. KRESEL: Anything that is agreeable to your Honor and to Colonel Anderson. Of course, I am very anxious to get along.

MR. ANDERSON: So am I, as anxious as I can be to get through. But I have not been well for a week and have been working under great difficulty.

THE COURT: Then the desire of the Government is that the session be adjourned until tomorrow morning at 8:30?

MR. ANDERSON: I would like it so, because it will take me about fifteen minutes to get my notes over here, and I do not think it will take very long in the morning to cross-examine.

THE COURT: We will adjourn now until 8:30 o'clock Standard time.

(Whereupon, at 3:45 P. M. Eastern Standard Time, adjournment was taken until tomorrow, July 6, 1923, at 8:30 o'clock A. M. Eastern Standard Time.)

TWENTY-SECOND DAY.

Wilmington, Delaware, July 6, 1923, at 8.30 o'clock A. M. Standard time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

JOSEPH H. CHOATE, JR., resumed the stand.

THE WITNESS: If your Honor please, I note in reading the minutes two mistakes, one of which I am conscious was the use of a wrong word by me. The other, I think, is the stenographer's error. I would like to correct them if I may.

THE COURT: You may.

3151, the third line of the second paragraph at the middle of the page, where I say, "One may be illustrated best by the case of salvarsan." I meant to say there "by the case of the Haber process patents," as will appear by the rest of the passage. I was speaking of the fact that the value of these particular patents was adversely affected by the possibility of foreign competition, particularly German competition; and what I had in mind was the fact that the Haber process patents, being process patents, the purchaser would be exposed to the full brunt of the competition of the German Haber Air Nitrogen Works, as well as the German coke oven and by-product gas plant production of ammonia.

The other error is on page 3152, the eighth line from the bottom, where I am represented as

saying, "They afterward went to the Chemical Foundation," referring to the algol vat dye patents purchased by the Grasselli Company. Of course, what I said was that they did not pass to the Chemical Foundation.

MR. ANDERSON: If your Honor please, my attention has been called to my answers to the inquiries of the Court on yesterday at pages 3047, and following; that one of my answers was possibly capable of a misconstruction. There was some interruption, and I changed the line of thought.

I wish to make it clear this morning that what I was intending to say at the time, to follow up what I did say, without going back over the discussion was this: Your Honor asked in effect whether the interests of the United States, commercial or possibly military (I may not state your Honor's language) could be considered as a consideration for this conveyance or as a part of the consideration of this conveyance. I was answering that question and there was another question asked and I diverted my thought to something else.

I wish to say that in my view and I shall contend here that the Alien Property Custodian had no right to consider the commercial or military interests of the United States, which was purely a question for Congress, and to the extent that that was treated as a consideration and reduced the price below the fair value of the property, it was confiscation and therefore illegal.

MR. KRESEL: Will your Honor pardon me, because I want to understand Colonel Anderson's position also. I wonder whether Colonel Anderson is drawing a distinction between the Alien Property Custodian and the President. Of course,

our contention is and will be that this sale was a sale authorized by the President and whatever was done was done under the directions of the President. Is it Colonel Anderson's position that the President had no right to consider the safety of the nation in making this sale? I wonder if Colonel Anderson would be willing to answer that question.

MR. ANDERSON: I am perfectly willing to answer it except that I do not want to get into an argument this morning, but merely wanted to finish up my statement of yesterday. I think I have developed the position of the plaintiff day by day here in elaborate arguments. The defendant has not developed its position in similar arguments. I might ask questions of counsel the same way, but I wish to say this in reply, as long as the Court has inquired on the subject.

In the first place, the Government contends that this transaction was not authorized by the President. That gets to the root of that inquiry. In the second place, the Government contends that the President of the United States has no more power to confiscate property than the Alien Property Custodian or any other officer and that the Constitution of the United States as to citizens of the United States is clear on that subject; and as to alien property, the law is well settled, that it can only be done, if at all, by Congress.

I may add to that, to make my position perfectly clear, that the question of what is the welfare of the United States, commercial or military, and what is necessary for the defense of the United States, is by the Constitution expressly vested in the Congress of the United States and that question is not one to be considered by an officer of the Executive Department like the Alien

Property Custodian; nor is it a question that can be considered by the courts.

THE COURT: Your last statement brings to mind a matter that I have had under consideration and that I have been trying to puzzle out in this case. I was just wondering why this suit was instituted at all in the name of the United States instead of the Alien Property Custodian if the title to these patents was in the Alien Property Custodian.

MR. ANDERSON: I will be very glad to answer that question, sir. The matter was carefully considered. Under the decisions of the Supreme Court of the United States and the line of cases illustrated perhaps by the United States v. Beebe, the Supreme Court has held that wherever a suit involved a public obligation or duty of the United States, whether it had a direct financial interest or not, or wherever it involved the interests of the United States, it was the duty of the United States to institute and maintain the suit; or at least that it had the authority to do so.

The view of the Government was that the Alien Property Custodian was only the hand of the United States to hold this property and therefore the United States was really charged with the obligations arising under this act and that it was its duty, it involved its public duty, its public obligations and its interests in a material way as representing the people of the United States, and it was the proper party to sue. That question was very carefully considered and that conclusion was reached after a most careful consideration of the authorities and the authorities, in our view fully sustained that conclusion. It is a very natural question because at first impulse, the same question arose in our minds.

THE COURT: In discussing the 5700 patents in which the Navy was given some interest I remember I remarked it seemed to me that was a transfer to itself. Then when you denied that I wondered how that was to be reconciled with the fact that this plaintiff is the United States. It was just a puzzle in my mind.

MR. ANDERSON: I did not intend to deny that it was a transfer to itself in the sense that your Honor is now discussing it.

THE COURT: No, I did not mean to lead you into that, Colonel Anderson. I have asked you numerous questions, because the plaintiff is seeking to change the status, you are seeking to set aside the sale. Until your pathway is marked out clearly and I get the bridge completed and understand your theories, it seems to me the burden is yours of marking out that pathway.

I shall have one or two questions to ask Mr. Kresel. For instance, some time when he has an opportunity of telling me I shall be very glad to have him tell me just how the chemical industry in the United States will be jeopardized by granting the prayer of your bill, assuming that you have made or will make out a title or a right in this case. I do not want that gone into now, and you understand fully that that question, no more than the preceding questions, indicates no conclusion in this case.

MR. ANDERSON: I quite understand, sir.

THE COURT: I desire to state that I have arrived at no conclusion on this case, because the fundamental question at the very threshold of this case is a construction of that statute and I have not re-read that statute and do not propose to reach a conclusion on that statute until after the argument may be had, on the 9th of October.

MR. ANDERSON: Your Honor will quite understand that whatever I have said did not apply to anything of that kind. I want to answer as far as I can, but for the past week I have not been at all well, and to answer offhand at the bar is sometimes difficult when your mind is on something else.

THE COURT: Yes, and when your mind is directed to one point rather than to a two-fold point. It seems to me the case is unique, and it has seemed to me if I am to thoroughly understand this case I must be helped during the time it is put in.

MR. ANDERSON: I appreciate that and am always glad to answer the questions.

THE COURT: I appreciate the patience you have displayed in view of the many questions that have been asked you.

MR. ANDERSON: I may say we quite agree the case is unique, and I may add that the Government regards it as a matter affecting its national and international rights and duties, and one of the most important litigations instituted for some time. It is my duty to help the Court in arriving at a sound conclusion.

THE COURT: I do not think any criticism can be laid to you for failure to do that.

CROSS-EXAMINATION.

By MR. ANDERSON:

XQ. 36. Mr. Choate you have never been connected in any way with the dye and chemical business, prior to your association with the Alien Property Custodian's office?

A. No.

XQ. 37. You are not a patent lawyer in the sense

that that title is usually used in the profession, are you?

A. No.

XQ. 38. You had never been connected with the manufacture of dyestuffs or chemicals in any way?

A. No.

XQ. 39. Mr. Choate, I am going to ask you certain questions about your testimony and I hope you will understand that there is not implied any criticism of you whatever.

A. Certainly.

XQ. 40. I know you will understand that, but I want to state that for the benefit of everyone else, that I have not the slightest disposition to do it. You appeared before the Ways and Means Committee of the House of Representatives in the hearing which has been referred to here as the Hearing on H. R. 2706, did you not?

A. Yes.

XQ. 41. In that hearing the record states that you appeared as counsel for the Chemical Foundation and American Dyes Institute?

A. I did.

XQ. 42. At page 88 of that record I read you an answer to a question by the Chairman.

A. May I have a copy of it?

XQ. 43. If you wish to have that record before you.

"THE CHAIRMAN: Give the name of the company you represent to the stenographer.

"MR. CHOATE: I appear here as counsel for the Chemical Foundation, into which I shall go in a moment, and also I have been asked to represent the American Dyes Institute, which is an association of all the dye makers, or substantially all the important dye makers in the country, because they have exactly the same point of view presented by

the Chemical Foundation today and are therefore properly represented by the same counsel. I came into this case, gentlemen, through my service in the office of the Alien Property Custodian, as has been pointed out by Judge Covington."

That is your testimony, isn't it?

A. It was.

XQ. 44. And that was a fact at that time?

A. Yes.

XQ. 46. I believe you have been the general counsel of the Chemical Foundation since it was organized in 1919?

A. Since the day which appears by the minutes on which I was designated in that capacity.

XQ. 47. You also appeared in the hearings before the sub-committee of the Committee on the Judiciary of the United States Senate on what is known as Senate Resolution 77, I believe, and testified at that hearing?

A. Yes.

XQ. 48. Will you turn to page 528 of that hearing?

A. Yes.

XQ. 49. (Reading):

"THE CHAIRMAN: Yes; you may proceed.

"MR. CHOATE: Of course, Mr. Chairman, I have been familiar with almost all of the activities of the Chemical Foundation from the beginning, because I had a part in its organization and also in the action of the Alien Property Custodian with reference to it. That matter has been so fully covered by Mr. Garvan that I assume, except possibly in the way of cross-examination, you will not wish to ask me any questions in regard to it. Everything has been stated accurately by Mr. Garvan and the others, and documents relative to the subject have been produced. I shall not, therefore, go into that except in answer to questions.

"In regard to the activities of the American Dyes Institute, I also conceive that the entire ground has been covered, with the exception of the references made by Senator King to the trip to Paris which I undertook for the American Dyes Institute in the autumn of 1920. I do not know that Senator King made any definite statements in regard to that trip, but I felt that what he said makes it appropriate that that trip should be explained.

"THE CHAIRMAN: You went as the representative of what company or association?

"MR. CHOATE: Of the American Dyes Institute. I had been counsel for the American Dyes Institute since the spring of 1919; retained by them to present to the Congress and the appropriate committees the case for special protection for the American dye industry, and in that capacity I had a part in all of the legislative activities; and I shall be very glad, of course, to answer any questions which may occur to you as to any of those activities. I think, however, they have been sufficiently explained to date."

That is your testimony, is it not?

A. It was.

XQ. 50. And that is a fair statement of the facts as stated there, is it not?

A. I think so.

XQ. 51. It was in September, 1920, that you went to Paris as a representative of the American Dyes Institute, was it not?

A. I think the end of September of that year. Wait a moment. I think it was in October of that year that I went to Paris.

XQ. 52. Yes, about that time. Can you recall about when you first became counsel of the American Dyes Institute?

A. A short time before the hearing before the Ways and Means Committee in 1919. That would make it either in April or May of that year; April, I

think. It was after the conveyance of April 10th to the Foundation.

XQ. 53. I will next read to you from your testimony before the Ways and Means Committee on H. R. 2706. I believe you have the book. Will you turn to page 106?

A. Yes.

XQ. 54. (Reading):

"Now, as we came to a knowledge and realization of those conditions in the Alien Property Custodian's office, it began to seem to us that it was up to us to do something about it. We came to the conclusion that we were in a unique position; that we were probably the only people in the country who, without having the slightest interest in the making or consuming of dyes, had in reality some knowledge of the business and of its importance. And so, although it was none of our business, as members of the Alien Property Custodian's staff, but purely for what we conceived to be reasons of public spirit, all of us who had the knowledge thus derived there, very early began to scratch our heads to see if we could not find some way of helping this industry here and, if possible, saving it. For a long time we were very much discouraged in the existing condition of legislation and saw no help for it. The tariff, as I said, we were satisfied would have absolutely no effect whatsoever on the German trust. I am coming to that in more detail later. Without legislation, which we could see it would be very difficult to get, it seemed to us that almost nothing could be done.

"On further consideration, we began to study the patents. At that time the Trading with the Enemy Act did not enable the Alien Property Custodian to take over patents, and there they stood, 5000 of them, an impassable obstacle to the American manufacturer. As long as those patents existed, we could not manufacture the vital dyes on which every kind of industry depended. Accordingly we bestirred ourselves and repre-

sentations were made before Congress which resulted in the amendment of November 4, 1918, permitting the Alien Property Custodian to seize patents. Then the question arose what to do with them.

"MR. MOORE: I will ask you if there is anything in that law authorizing you to do anything with those patents to be seized?

"MR. CHOATE: In that law coupled with the existing law, the references from one to another give the power of sale.

"MR. MOORE: The Alien Property Custodian had a right, under the law as amended, to sell?

"MR. CHOATE: He undoubtedly did.

"MR. MOORE: I remember at the time of the passage of the act that was discussed, and I have since wondered just how he came to have that right and just how it was exercised.

"MR. HAWLEY: Did that transfer the property in the patent finally?

"MR. CHOATE: Finally, and once for all; just like any other piece of personal property.

"MR. HAWLEY: So the original German owner lost the patent?

"MR. CHOATE: The original German owner lost the patent absolutely, but received the right to get back whatever Congress saw fit to give him."

That is your testimony, is it not?

A. It is; that is to say, I suppose that question means that was my testimony given at that hearing.

XQ. 55. Yes, Mr. Choate, you understood this situation thoroughly at that time, I think you said yesterday.

A. Certainly. The only qualification I had to suggest was that it represents my conclusions and my beliefs at that time.

XQ. 56. Just after the original sale took place?

A. Oh, yes; and they are my beliefs at the present time, but as to a good deal of it, it is conclusion.

XQ. 57. On page 108, you were asked a question by Mr. Moore, about the middle of the page:

"MR. MOORE: These patents were the private property of our alien enemies?

"MR. CHOATE: Surely.

"MR. MOORE: They did not belong to the German Government except as it might be that the Kaiser personally had some interest in the patents; and being private property or corporate property as the case might be. What return can we make at the close of hostilities, in the peace settlement, for the property we have just taken and appropriated to ourselves or appropriated for the purposes of the Chemical Foundation, Inc.?

"MR. CHOATE: Gentlemen, that is for you gentlemen of Congress to say. We have nothing to say about it. It is a matter of legislative policy to say what form of justice shall be meted out to the Germans.

"MR. MOORE: But you have just stated that the idea originated with the Alien Property Custodian, who desired an amendment to the law in order that he might cover this very point for the purpose of seizure and sale.

"MR. CHOATE: In order that patents might be placed on precisely the same footing as other personal property.

"MR. MOORE: He is in position to make an accounting now, as Congress expected?

"MR. CHOATE: Yes; because the law requires that he shall make an accounting."

That is your testimony, is it not?

A. That was.

XQ. 58. And so far as you know, the facts stated there are the facts, are they not?

A. They represented my beliefs then and now.

XQ. 59. And further down at the bottom of the same page, I would read to you as follows. You were speaking of the Chemical Foundation.

"MR. MOORE: It is an American corporation effected under the auspices of a Government official, the Alien Property Custodian, and presided over by the present Alien Property Custodian, who has been placed in possession of these German rights, subject to such legislation as we may have enacted, which they propose to turn to their own use. That is the reason I bring the question up and I think it is very pertinent.

"MR. CHOATE: The patents have been sold precisely as necklaces, horses, and pictures, stocks, and bonds belonging to the Germans in this country have been sold.

"MR. MOORE: But they were not perishable like horses and cattle.

"MR. CHOATE: Some were extremely perishable; some had about expired.

"MR. MOORE: So far as stocks and bonds seized and sold is concerned you certainly have the proceeds somewhere.

"MR. CHOATE: We have the proceeds of the patents.

"MR. MOORE: And you are to account to Congress in due course of time.

"MR. CHOATE: The proceeds of the patents are in the hands of the Alien Property Custodian for the patents sold.

"MR. MOORE: What was paid for those patents?

"MR. CHOATE: $250,000.

"MR. MOORE: By an arrangement with the Alien Property Custodian, they were sold to the Chemical Foundation, Inc.?

"MR. CHOATE: Yes.

"MR. MOORE: He suggested this law in order to take them over?

"MR. CHOATE: Precisely.

"MR. MOORE: May I ask how the terms were fixed?

"MR. CHOATE: Those terms were fixed by guess-work in the same manner as an individual would value patents by guess-work."

That is your testimony in this hearing?

A. It was.

XQ. 60. If you will turn to page 110 of the same book, I will read your statement without going into the question, unless you desire it. In reply to a question by Mr. Moore you made the following statement:

> "To resume; something had to be done with those patents. The only thing the Alien Property Custodian had the power to do, without further help from Congress, was to sell them. Now the universal practice of the Alien Property Custodian's office was to Americanize the seized companies as far as he could by selling their securities, when found in German hands, to first rate competent American purchasers."

Was that your testimony?

A. Yes. When you say, "was that your testimony", perhaps it conveys the idea that it was the whole of my testimony on that subject. I so testified.

XQ. 61. I will put it that way. Did you so testify?

A. Yes, sir.

XQ. 62. I think probably your suggestion is a good one, because I have not read your entire testimony.

A. (No answer.)

XQ. 63. At page 506 of the same book, Mr. Choate, where the testimony related to the question of the character of the Chemical Foundation, Incorporated, I wish to read just two questions and answers at the middle of the page.

Question by Mr. Moore:

> "The Chemical Foundation (Inc.) was still a private corporation and is now?
>
> "MR. CHOATE: It is still a private corporation technically, but as nearly public as could be organized.
>
> "MR. MOORE: And we have gone into it suf-

ficiently to show that the only relationship it has with the Government is that Government officials are connected with it?

"MR. CHOATE: That is all."

You so testified, did you not?

A. I did.

XQ. 64. You stated I think that that hearing, and it may appear of record, was in June and July of 1919?

A. That is right.

XQ. 65. Will you now get the book entitled "Dyestuffs Hearing, before the Committee on Finance of the United States, on H. R. 8078" frequently referred to in this case? I will ask you to refer to page 116, beginning about the middle of the page.

Question by Senator Watson:

"You did not limit it to German patents. You said all other chemical patents, and I wondered whether you included all those hereafter taken out.

"MR. CHOATE: Oh, no. The idea was suggested to a gathering of as many of the representative men in the industries as we could get together, and they went out and organized their corporation, the Chemical Foundation. Then there came up the question of how we were going to sell to it. The Alien Property Custodian, Mr. Palmer, and Mr. Garvan, were insistent that the sale should be by public auction. That was the ordinary way of disposing of German property, and it was the natural way, the generally desirable way.

"We found the representatives of the industries unanimously opposed to that course for reasons stated by them which finally convinced me and convinced Mr. Garvan and convinced Mr. Palmer; and those reasons were these: Having interested in the Chemical Foundation substantially all the principal manufacturers whose business was affected by these patents, it included nearly

all the possible manufacturers who might have been found at a public sale at auction as proper purchasers for the patents. Outside this group a legitimate purchaser, therefore, could hardly be found. But even if that had not been the case, had the patents been put up at auction, either the same thing would have happened as happened in the case of the Bayer patents, and they would have been bought in in one block or in a half dozen blocks or 40 blocks by manufacturers, and thus closed to the rest of the American industry, or else—and this we feared still more—they would have been bought in by speculators, who would have bought them for their nuisance value, out of which a speculator might well have made a handsome figure. It would have been impossible to detect and reject a speculator as purchaser, because he could easily have hidden under a perfectly respectable dummy or nominee.

"Accordingly, it was determined that it would be impossible and unsafe to put those patents up for public sale, and it was agreed that the matter should be presented to the President of the United States, with a request for an Executive order authorizing the private sale to the Chemical Foundation; and that was the course which was followed. The price of $250,000 that was fixed for the patents was, as you may well suppose, a guess. No human being could put a value on that block of patents; none of them had been used in this country, a very large proportion of them had not been used anywhere else. They were held for their nuisance value only, and no man could say what that nuisance value was. No one was disposed, I think, to lean backward in the way of overvaluing the nuisance value of a patent owned by an enemy, a nuisance value which reacted against an industry which we believed to be so important.

"Therefore, the figure of $250,000 was arrived at as the best obtainable guess on the part of anybody and the transaction was put through on that basis."

Was that your testimony?

A. I so testified.

XQ. 66. Mr. Choate, are you not mistaken there in saying that none of these patents were being used in this country, and is it not a fact that a number of them had been licensed by the Federal Trade Commission and were then being used under those licenses and in a number of cases there were contracts outstanding for the use of those patents which had been seized by the Alien Property Custodian?

A. I think there were exceptions. I think you are right. Federal Trade Commission licenses do not by any means represent the actual use in the country, because a great majority of these Federal Trade Commission licenses at that time represented hopes rather than existing practices. But in the case of salvarsan and the patents covered by the pre-war contracts, there had been some use made in the country.

Q. 67. I only wanted to make that perfectly accurate to conform with the record.

A. (No answer.)

Q. 68. I think you testified elsewhere and I will try to find the testimony if you desire, but it is merely to get the facts, that there had been invested by American manufacturers very large sums of money at that time in the development of the dye industry largely during the war under some of these patents and Federal Trade Commission licenses?

A. My opinion was that in research carried out in the endeavor to produce under the vat dye patents there had been very large sums expended by at least two manufacturers.

XQ. 69. And at that time the production of dyes in the United States was quite large, was it not?

A. Of dyes generally, yes.

XQ. 70. That is what I mean.

A. Not of the patented dyes.

XQ. 71. The record put in here of the Federal

Trade Commission income shows that considerable sums had been paid on account of the royalty of five per cent. on the production under those patents which were licensed. You are familiar with that evidence, are you not?

A. I have heard the evidence that has gone in here, but I do not recall evidence of any payments indicating receipts by anybody on patented dyes before the date of the conveyance.

XQ. 72. That, of course, would be a question of examining the evidence. I am not very sure on that question at all.

A. Certainly it would surprise me if I found now that anyone had made any money out of any patented dye before the first conveyance to the Chemical Foundation. I think the money was confined to pharmaceuticals.

XQ. 73. You spoke of arriving at the price of $250,000. Did you ever hear any other sum than $250,000 suggested?

A. Yes.

XQ. 74. What was it?

A. A figure of $500,000 was discussed with someone at some time before the final fixing of the price. Do you want my recollection in that regard?

XQ. 75. That replies to my question. If there is any other fact in connection with it that you feel should be given to make your answer complete, I have no objection whatever.

A. I recall a discussion with someone, I rather think it was Mr. Wigglesworth, who suggested that the sum of $500,000 had been suggested as the price, and he then informed me that that price was quite impossible, that the industry never could or would raise that price together with the necessary funds which would be required to protect the patents; and I think I re-

ceived the same information from several other persons whose names I can not now recall.

XQ. 76. You still have the book H.R. 2706 before you, have you not?

A. I have.

XQ. 77. At the bottom of page 117, in speaking of these German patents taken over by the Chemical Foundation, you were asked this question:

> "MR. GREEN: These companies, by virtue of their operation, whether in connection with these patents or not, and although while holding these patents have made immense profits in this country?"

He is referring to the German companies.

> "MR. CHOATE: Large profits, I should say.
> "MR. GREEN: And profits that both you and Mr. Garvan were aware of?
> "MR. CHOATE: Yes."

You so testified, did you not?

A. I did.

XQ. 78. Have you before you the hearings on the Tariff Act of 1921, H.R. 7456?

A. I have.

XQ. 79. Will you turn to page 518, please? Question by Senator Smoot:

> "SENATOR SMOOT: If I asked you, as my attorney, and you were not the attorney of the Chemical Foundation, whether I would be safe in buying all of the patents held by the foundation for $250,000 today, what would you tell me?
> "MR. CHOATE: I should tell you, in the first place, that the Chemical Foundation was incapable of selling the patents under its charter.
> "SENATOR SMOOT: As an attorney of the Chemical Foundation, do you think that $250,000 was all that those patents were worth?
> "MR. CHOATE: I think it was not all they would have been worth to a private purchaser, unlimited

in the use of them. A private purchaser unlimited in the use of these patents could have made very large sums by holding up the industry with them. Their nuisance value was very large.

"SENATOR SMOOT: There are patents there, outside of the nuisance value, that are worth a great deal more than $250,000.

"MR. CHOATE: To a private purchaser, undoubtedly, outside of the nuisance value; but you forget that the Chemical Foundation, both by the terms of its charter and by the terms of the Foundation, is absolutely limited in the use of these patents, so that it can not profit beyond the necessary sum to pay a six per cent. dividend on its very small stock; so that all the rest of the money that is received has got to be used for the advancement of science; and, furthermore, it is so limited that it can not use the patents in the way in which an individual would, by the issue of exclusive licenses. It can only issue nonexclusive licenses, which must be issued on equal and reasonable terms to all American citizens, partnerships, and corporations.

"SENATOR MOSES: These licensees have profited, have they not?

"MR. CHOATE: I hope they have."

You so testified, did you not?

A. I so stated, yes.

XQ. 80. That hearing took place in 1921, in August, did it not?

A. It did.

XQ. 81. And I believe, Mr. Choate, you represented the Chemical Foundation at that hearing?

A. No.

XQ. 82. Was it the American Dyes Institute?

A. American Dyes Institute only.

XQ. 83. Now I will ask you to turn to the book containing the hearings before the Ways and Means Committee on H.R. 2706, page 122. I read the following from your evidence. Question by Mr. Kitchin, who

I think it appears here was a member of the committee and a member of Congress.

"I just wanted it to appear on the record. Now, your company, after the purchase by this chemical company of these 1200 patents, was organized, and then the other patents were put on sale at public auction?

"MR. CHOATE: They were not sold by public sale by the Custodian, because it would have been impossible to do that for a variety of reasons. All the possible available bidders who could have bid in good faith for these patents as real manufacturers were already in the enterprise, because they were members of the American Dyes Institute. The only other kind of bidder there could have been would be a hold-up artist who would buy the patents either for the benefit of his own pocket or who would buy them to hold them up from use. It required an Executive order from the President to effect that transfer.

"MR. KITCHIN: I simply desire to get the facts on the record. Now, were these patents offered separately or were they en bloc?

"MR. CHOATE: Were they what?

"MR. KITCHIN: Offered separately, or were all the patents covering dyestuffs offered en bloc?

"MR. CHOATE: They were sold in one transaction to the Chemical Foundation.

"MR. KITCHIN: What was the actual amount of cash that was paid for them?

"MR. CHOATE: $250,000.

"MR. KITCHIN: You stated it before, but I want to get it in this connection. Now, did your patents cover any other part of the chemical products except dyestuffs?

"MR. CHOATE: Yes, sir; all chemical products we could lay our hands on, but it is only in the dyestuffs that the patents are of great importance—dye and pharmaceutical goods—because it is only there that the patent is especially important. They covered salvarsan and other products and all the rest that we could get our hands on.

"MR. KITCHIN: Did any of the manufacturers of this country have the advantage of these patents, or were they allowed to make without protest on the part of the Government or anyone dyestuffs under these patents during the war?

"MR. CHOATE: No, sir; but there was a provision in the 'Trading with the Enemy Act' that enabled them to get a license from the Federal Trade Commission, but under that provision they were required to pay a 5 per cent. royalty to be held by the Alien Property Custodian for the benefit of the German competitor after the war, and also to buy a lawsuit, because the act provided that there should be a determination by a court of how much more than 5 per cent. they should pay.

"MR. MOORE: Would the United States have suffered in the war if we had continued to hold those patents in the hands of the Alien Property Custodian until the close of the war?

"MR. CHOATE: In this war, I doubt it.

"MR. MOORE: They were of no avail to us during the war?

"MR. CHOATE: I think not

"MR. MOORE: And of course the Germans could not use them here?

"MR. CHOATE: It is a very difficult question, but I suppose that the patents on the dyestuffs products themselves would have little bearing on the war. It is their bearing on the dyestuff industry that gives them a colossal importance. We might have held all the property and given it back to the Germans."

Did you so testify?

A. I did.

XQ. 84. I will now ask you to turn to the Hearings on the Tariff Act of 1921, H. R. 7456, page 519, question by Senator Moses:

"SENATOR MOSES: Was there ever any intimation that a license would be refused?

"MR. CHOATE: At the outset the policy of the Foundation was not fully determined. It was real-

ized that it would be very unfortunate for the industry if a large number of licenses should be simultaneously issued covering the production of some product not previously made in this country, inasmuch as the issue of such a large number of licenses would discourage any of the licensees from actually putting money into the business and going to work; but it was very soon determined by a vote of the stockholders' advisory committee, consisting of all the stockholders, that the policy was unwise and improper and that there must be no limit to the number of licenses under any patent."

Did you so testify?

A. Yes.

XQ. 85. I believe you stated on yesterday that you wrote that chapter 2 of Mr. Palmer's report?

A. I did, substantially, as it was afterward transmitted to the President.

XQ. 86. And as it appears in Defendant's Exhibit 30 here?

A. Yes.

MR. ANDERSON: I have no further questions, if your Honor please.

THE COURT: Any re-direct, Mr. Kresel?

MR. KRESEL: No, your Honor. In view of the many extracts from Mr. Choate's testimony before all these committees that have been read by Colonel Anderson, I now desire to offer Mr. Choate's entire testimony before these committee's. It manifestly gives an imperfect picture of this witnesses's testimony before these committees, to take out a paragraph here and a sentence there. So I now offer as part of this witness's examination the testimony given by him before the Committee on Ways and Means of the House of Representatives. I shall indicate the pages. It commences at page 87 of this report,

and runs to—I will supply the pages in a minute, your Honor, as I understand Colonel Anderson has an objection to offer at this point.

MR. ANDERSON: If your Honor please, of course I object. I venture to say that in the whole range of the law no instance can be found in which a witness can be put on the stand and his testimony on a former occasion be offered by the party who put him on the stand.

I have tried to fairly question Mr. Choate on his testimony and have read a good deal from his testimony that was not pertinent to the questions I desired to ask, to the end that his statement might be as full on the point as I could make it. But to put in his entire testimony at a hearing before the Committee, as to some of which he was under oath and as to some of which he was not—not that I mean to imply that would make the slightest difference in his statement—and to put those statements in without cross-examination before the Committee, I think a matter that needs no argument. Therefore I make the objection without further argument on the subject.

MR. KRESEL: If we were to enforce the strict rules on the subject, your Honor I think will bear me out in the statement that the only purpose for which a witness' testimony in another proceeding or statement in another proceeding may be used against him on cross-examination, is for the purpose of contradiction, for the purpose of affecting his credibility, for the purpose of showing that upon another proceeding he made a statement contrary to what he states at the time he is being examined.

If I had wanted to enforce any strict rule here, there is much of what Colonel Anderson has read in from Mr. Choate's statement and testi-

mony that is in no wise contradictory of what he has stated here and would therefore have been inadmissible. But I did not raise the objection; I did not propose to raise any objection. It is quite evident that the portions read by Colonel Anderson do give a distorted and an imperfect picture of what Mr. Choate stated upon the subject, and I think that there ought to be no objection raised by the Government to having appear before the Court what Mr. Choate stated fully upon the subject.

Your Honor will recall when Colonel Anderson read in passages from Mr. Choate's statements upon his case, we objected thereto, and I stated then that I should avail myself of the right, upon my case, to read in other portions of Mr. Choate's statement and testimony before these commitees, which portions had a connection to the matter read in by Colonel Anderson. I am prepared to read such portions. I have made notes of the pages wherein they appear. But I thought that in view of the very large number of passages that Colonel Anderson read this morning from this witness's testimony and statement, it would serve the Court's purpose better if the Court had before it this witness's entire statement. I think it is only fair that it should go in and I offer it.

MR. ANDERSON: I think it has no relation to the issues in this case, your Honor. I have read from those portions which I thought related directly to Mr. Choate's testimony of yesterday, and so far as I recall every one of them did relate to his testimony of yesterday. I put in other portions of the testimony in the case on direct under the rule of admissions, and your Honor permitted Mr. Kresel to read in other portions of

Mr. Garvan's statement on the same principle—over our objections, of course.

If Mr. Kresel wants to examine Mr. Choate on any of the questions which I read to him or any extracts which I read to him, supplement them by his examination, that comes within the rules of evidence. Otherwise, of course, I will object. But certainly I most earnestly object to putting in this testimony en bloc. I will not say that the whole business relates to foreign matters, but a large part of it relates to foreign matters, and my examination related strictly to the issues in this case and to the points testified by Mr. Choate on direct.

Mr. Kresel: I do not think there will be any difference between Colonel Anderson and myself on the point that Mr. Choate's entire testimony before these committees had reference to the transfer of these patents to the Chemical Foundation and to the importance of the dye industry to the country. Those are the issues in this case, and I do not see where there is any ground for saying that what Mr. Choate stated or testified before these Committees or any part thereof, has no reference to this case. That was the matter that was being investigated by those committees.

Mr. Anderson: I do not concede that the question of the importance of the dye industry to the United States has anything to do with this case.

Mr. Kresel: Whether you concede it or no.

Mr. Anderson: It is utterly immaterial, we contend, and cannot be considered by this court.

Mr. Kresel: It is an issue raised by our Answer.

The Court: Are you through on both sides?

Mr. Kresel: Yes, your Honor, I am through.

THE COURT: What is the purpose of your offer, Mr. Kresel?

MR. KRESEL: The purpose of my offer, your Honor, is to show that the portions of this witness's testimony read in are distorted—I do not mean that in any offensive way to Colonel Anderson at all—fragments of this witness's whole statement and testimony which, if left without the other portions of his testimony, would be misleading and not helpful to the Court:

THE COURT: The purpose of my question, Mr. Kresel, was to find whether your offer of the evidence of Mr. Choate taken before these several committees is based upon the ground that such testimony shall be here received as if given by Mr. Choate on the witness stand, or whether your purpose in offering it is to have the portions of that testimony admitted fully reflect the views as expressed by Mr. Choate before those several committees, so that his statements there made and views there expressed will be reflected by the full testimony rather than be misunderstood, perhaps, by a portion of the testimony.

MR. KRESEL: Your Honor, the latter is my purpose.

THE COURT: That is said, Colonel Anderson, without knowing anything about the full testimony of Mr. Choate except what has appeared before and what has been read; because I have not had any of those copies in my hand. Whether the attitude of Mr. Choate at that time is fully and completely, fairly and properly reflected by the portions you read I cannot now determine.

MR. ANDERSON: May I make this suggestion. Under your Honor's rules heretofore made in this case, which I simply reserve on——

THE COURT: Yes.

MR. ANDERSON: I would recognize that Mr. Kresel has the right, and probably had the right any how—I mean as a matter of general law—to read other portions of Mr. Choate's testimony and ask Mr. Choate if he did not so testify, to the end that he might make his views complete if he thought they were not complete in the portion read. Mr. Choate, now being on the stand, there is a different question presented, not one of merely reading it into the evidence. The original objection I made was on the ground of admissions. He can ask Mr. Choate if he so testified this or so testified that, specifically, but I earnestly submit that he has not the right to put in the entire testimony without giving me a chance to raise the question whether it is hearsay, whether it is—

THE COURT: That would be true, Colonel Anderson, if he was offering it as primary evidence; but as I understand him, he is not so offering it, and if he were so offering it I should let it go in under the general rule, though I have no hesitation in saying so far as I am concerned it would be useless. The purpose of the portions which you read was necessarily that of reducing the weight or nullifying the value of the testimony given in chief. If you have read portions which will best serve the plaintiff's purpose in that particular, and if the defendant contends those portions cannot be read separate and apart from the whole testimony, then it seems to me there is no difference between you, because you say that Mr. Kresel may read certain other portions and ask him if he so testified. Mr. Kresel says those other portions embrace all the rest of his testimony.

MR. ANDERSON: If your Honor please, I think I have the right to call your attention to the fact

that Mr. Kresel has inadvertently made a mistake. A very large portion of this testimony relates to the dye embargo, tariff rates, a trip to Europe, things of that kind which have nothing whatever to do with the issues in this case as I see them. Of course, I recognize that as to some of them counsel may take a different view. I am objecting to this testimony on the general and specific grounds reserved to all of it, which goes to the materiality and relevancy, but I cannot point out the immateriality and irrelevancy of it unless it is read.

However, I object to the form and the method of putting this evidence in. The only possible way the former testimony can be used except for the purpose of impeaching a witness on cross-examination or as an admission, as I now recall, is to ask the witness if he did not so testify, in redirect. The position of counsel who puts the witness on the stand is that he must get his case from the witness on the stand, and no matter what he has testified to before he must get it from the stand in any case.

THE COURT: There is no doubt about that.

MR. ANDERSON: Therefore, he can ask Mr. Choate, in view of the fact that I have asked him as to his former testimony, if he did not also testify to the following effect. I think that would be fair, and my view of the rules of evidence is that they are rules of fairness and common sense. True, some of them are so mixed up by exceptions that it is like spelling in the English language, you cannot tell just which it should be.

Reserving our general objections on the subject, I do object to dumping into this record hundreds of pages wholesale, as to which I cannot

carry in my mind what it is and I do not know what it is. I have not time to examine it while this witness is on the stand. It may relate to matters I have not seen, because of the thousands of pages in this matter I have not been able to read all and I could not if I would. I am discussing chiefly now, outside of our general objections, a question of the method of putting Mr. Choate's former statements in the record. If the counsel wants to ask Mr. Choate if he so testified, in order to get his testimony accurate, and read it to him, as long as it is relevant to my cross-examination and the issue here I would not on that ground object to it.

THE COURT: Does it not come down to this which is stated by Wigmore on page 199 of the pocket code:

"Where the purpose is to impeach a witness by prior statements of his in writing,"

it does not happen to deal at this page with prior testimony—"the rule for production applies subject to the following qualifications: (a) The writing need not be shown or read to him before asking him as to its contents. (b) But the tenor and circumstances of the supposed statement must be sufficiently specified to him orally in a question, pursuant to Rule 108 (ante §579). (c) If he admits, in replying to such question, that he did make the statement asked about, the writing need not be produced by the impeaching party, unless the trial Court deems it fair to do so."

MR. ANDERSON: I went to the extent of showing him the evidence every time before I asked him the question. I think that is a fair thing to do, because no man can carry all that matter in his mind.

THE COURT: But I think "produce" does not mean merely exhibit it to the witness, does it?

MR. ANDERSON: The rule says that you need

not show it to him in advance. I went to the extent of showing their evidence to both Mr. Garvan and Mr. Choate every time in advance.

THE COURT: I appreciate that. But my interpretation was not the same as yours. I thought Mr. Wigmore meant by production that the writing itself need not be placed in evidence.

MR. KRESEL: May I say, your Honor that what Colonel Anderson is mentioning is just what I am trying to avoid. I am trying to avoid standing up and reading to this witness long passages from his testimony which will take an hour or two, and simply asking him, "Did you so testify?" That is a thing I am trying to avoid.

As for Colonel Anderson not knowing the record, I say now that of course, if your Honor will permit me to put in the statements made by Mr. Choate, he has an absolute right, and I recognize it, to examine Mr. Choate upon any of those statements. It is not going to serve anybody's purpose if I take up these records and stand up for an hour and ask the witness, "You said so and so. Did you say so?"

MR. ANDERSON: If your Honor please, that is exactly the point. I am perfectly willing to save time, but I am not willing to save time by a suspension of the rules of law and evidence. If Counsel want to put in any additional statements of this witness, I must, with an earnest desire to close this case, ask that it be done in a regular and formal and proper way to the end that I may know the testimony he is putting in and relying upon. Hundreds of pages of evidence put in here without having counsel point out what he is relying on or its pertinency to this case, would not be fair to the plaintiff.

THE COURT: The only purpose for which it can be offered is not as primary evidence of the statements therein contained. but to qualify, in so far

as it will do so, the impeaching effect of the portions which you have referred to.

Mr. Anderson: May I say that I regard this as very important and a matter of great consequence in this case. In the first place, may I suggest to your Honor that when you get up in a Court above or even in this Court with a record of this size, it is perfectly impossible to distinguish between evidence which is put in as proof and evidence which is put in for some other purpose than proof. I know of no practice that is more destructive.

We of course are trying the case before a Court, but we consider it as being tried before a jury. Nothing can be more destructive of the rights of litigants than to put in evidence for a limited purpose of this kind and let it all be read. You can not get it out of your mind. The human mind is so constituted that it believes what it sees. When we see a thing in print, we believe it is so. You usually believe what the newspapers say. I do not mean to reflect upon the newspapers in that regard, but we do know that the effect of what we see in a newspaper is much stronger than if somebody told us so.

In my view, the full limit to which counsel can go in this case in connection with the statements read is to read the connection in which those statements are made; and therefore I must earnestly urge that this offer be rejected.

The Court: Colonel Anderson, are you not placing me in this position, although I am not complaining, that there is scarcely a document that was put in by you that was not with equal earnestness opposed by the defendant? In order that this case may be tried this time for the last time, that the issues here raised may be determined by

the Appellate Court or by the Supreme Court on the record here presented, there was no rule of evidence barring the putting in by you of any record, writing or document that you believe you could make use of in a determination of the issues in this case, Are we not both estopped by that?

MR. ANDERSON: I will answer your question in the negative, sir. There are any number of documents that Mr. Kresel might desire to put in here as to which I think your Honor's ruling might apply. There might be a limit. I do not know whether you could put in a discussion of Einstein's astronomical theory here. I think the Court would impose some limit.

But here is a matter of form in the putting in of evidence. Your Honor has ruled a number of times on the form or presentation of evidence. For instance, suppose when Mr. Metz was on the stand, after he was cross-examined, without showing him the evidence, I had gotten up here and offered these three books in which he testified to these thousands of pages of stuff. I assume that your Honor would rule, of course that the witness while on the witness stand must have his attention called to his former testimony. You can bring out any of his former evidence that has relation to the questions asked him, but you can not admit into this record the evidence given in hearings before committees, even to show that he made a more complete statement, without pointing out that it relates to something asked on cross-examination.

While your Honor has opened the door wide, there are certain rules under which the evidence must be put in, even if the doors are wide open. I object to the method by which counsel proposes to put this evidence in.

THE COURT: I will sustain your objection to that and you may take such time as you need, Mr. Kresel.

THE WITNESS: If your Honor please may I make a suggeston? Is there not a stipulation that the witnesses will be deemed to have testified as set forth in those volumes?

MR. ANDERSON: The stipulation, as I recall it, is to this effect: that any of these documents containing this evidence may be used without formal proof that the evidence was so taken. In other words, ordinarily, we would have to call the stenographer to prove that the witnesses so testified at such a time. We waived the formality of that proof, just as we waived formality in the proof of a letter. But it was not to be put in evidence as if it were testimony given on a former occasion, as proof of facts contained therein.

MR. KRESEL: That was my understanding, as Colonel Anderson states. I do not believe it was intended to bind either party to a situation where the other might put in testimony without any further proof.

MR. ANDERSON: If we had, we would not have called these witnesses at all.

THE COURT: All I am restricting you now to, Mr. Kresel, is to proving such portions as you deem relevant for the purpose of negativing or modifying the impeaching effect, if any, upon the testimony of this witness as the result of the portions of the testimony of Mr. Choate before the Committee, read by Mr. Anderson.

RE-DIRECT EXAMINATION.

By MR. KRESEL:

RDQ. 87. Mr. Choate, will you now take up this volume containing the minutes of the hearing of the

Committee of Ways and Means and turn to page 88 thereof?

A. Yes, sir.

MR. KRESEL: Colonel Anderson read a portion of the second paragraph on that page ending with the words "Judge Covington." I desire to offer in evidence now the balance of that paragraph together with the statement following that paragraph on page 88, page 89 and page 90, to the end of the first paragraph on that page.

THE COURT: Now then, in order that I may understand, is there any question that the witness so testified, or do you want to ask him a specific question?

RDQ. 88. Did you so testify as is reported there?

A. I did.

THE COURT: Is it your purpose that the stenographer shall take those books and copy them at large?

MR. KRESEL: No, your Honor; I simply want the record to give the pages and I will identify them sufficiently so that there will be no difficulty.

THE COURT: Then are you offering that as a separate exhibit to be numbered? If so, the Clerk had better give it a number. It must either be copied at length by the stenographer or be given a number by the clerk. The clerk suggests that all the portions which you indicate may be given one exhibit number.

MR. KRESEL: All the portions in one book be given one number?

THE COURT: Yes.

MR. KRESEL: I think that is a very good suggestion.

RDQ. 89. Now, Mr. Choate, please turn to page 92, beginning with the question by Mr. Moore which reads as follows: "Mr. Moore. In papers left in New

York, Washington and elsewhere?" down to and including the paragraph on page 94 which reads as follows: "Mr. Choate, They are not able to do any more importing than they could possibly help, because of its effect upon foreign exchange and the value of the pound and franc."

MR. ANDERSON: Now, if your Honor please, I wish to note an additional objection, in order to preserve the record. First, I move to strike out the matter introduced from pages 88 to 90, for the reason that it has no relation whatever to the subject covered by the portion which I introduced. To make my point clear, I was merely showing Mr. Choate's connection. In the next question he goes on to discuss the conditions of the dye industry in the United States, and there certainly can be no relation between those two things.

Second, I object on the ground that a very large proportion of his statement is obviously hearsay. He quotes various people with whom he has talked, and therefore he could not testify to that on the stand and it can not be read in evidence. For those reasons, I move to strike out that portion introduced on pages 88 to 90 inclusive.

Now, on pages 92 to 94 inclusive, the matter read has absolutely no relation to the subject matter which I introduced on the part of Mr. Choate, but is entirely new matter and original matter presented by counsel himself, and not explanatory of or connected in any way with the evidence which I introduced.

I recognize the difficulty of ruling on evidence this way; but I have to preserve the record. I therefore object to each question and each answer so read and move to strike the same out.

THE COURT: If your objection is well taken,

then the evidence so admitted is wholly without value. That is as far as I can go.

MR. ANDERSON: I understand. I merely want to preserve the record and note the objection and exception.

THE COURT: Because any testimony given by Mr. Choate before the committees, for other purposes than that of refreshing his recollection, or possibly some other purposes which I do not now think of, must be given from this witness stand and not put in indirectly that way. It is only for the purpose of having the portions of the testimony given before the committee in this way properly reflected here that it is admitted at all.

MR. KRESEL: May I proceed, your Honor?

THE COURT: Yes.

RDQ. 90. On page 95 of this book, Mr. Choate, I direct your attention, without reading it to you, to the statement made by you beginning with the paragraph reading as follows: "THE CHAIRMAN: Now, Mr. Choate, if you will proceed." And going from there to the bottom of page 97 of this volume. Did you make the statement therein contained before the committee at that time?

MR. ANDERSON: Same objection and motion.

A. I did.

RDQ. 91. I now turn to page 108 and page 109, from which Colonel Anderson read portions, and I direct your attention to page 109 beginning with the paragraph as follows: "Mr. Moore. It is stated in this very interesting publication of the Chemical Foundation (Inc.), which is evidently intended for this committee, that 4,500 of these patents which applied to chemistry Mr. Palmer has sold for the benefit of American industries to a quasi-trustee corporation, called the Chemical Foundation." From that point on to the end of the first paragraph on page 111, which ends

with the sentence "Where could we find them?" Did you so testify as reported at the pages to which I have called your attention?

MR. ANDERSON: I make the same objection as that made to the preceding question, and to all this evidence, as already stated, the objection applying to so much thereof as was not read by me on the cross-examination, because it includes a part of what I read, or to so much thereof as is not directly related to the subjects discussed in the portion which I read on cross-examination.

A. I did.

RDQ. 92. I also direct your attention to the statement at page 111, bottom of the page, beginning with a statement reading as follows: "Mr. Choate. At all events, there was a board I think we all respected and who had the confidence of the community and certainly knew the Germans and their works." Going from that point to the last but one paragraph at the bottom of page 112, which reads as follows: "Mr. Choate. Under our charter we can not license any corporation three-quarters of whose stock is not held by American citizens. I think that is a very wise provision. We do not want ever again to get in a position of having our industries controlled by foreign corporations." Did you make the statement as appears at the pages that I have just indicated?

MR. ANDERSON: Same objections as stated above, which will be considered as made in each case without being repeated, and subject to the limitations therein stated.

A. I did.

MR. KRESEL: I am sorry to take all this time, your Honor, but I can not avoid it.

THE COURT: Are you through with that volume?

MR. KRESEL: I am through with this one volume.

THE COURT: Then let it be marked as an exhibit.

MR. KRESEL: In other words, the passages that I have indicated will receive one number.

THE COURT: Yes.

Received in evidence and marked "Defendant's Exhibit 141," being passages indicated from volume entitled "Hearings before the Committee on Ways and Means on H. R. 2706." (*See Exhibits, Vol. V, page 2743.*)

RDQ. 93. I read from page 92 of the hearings before the Committee on Finance on H. R. 8078. Will you please turn to that, Mr. Choate? Question by Senator Watson:

"Senator Watson. And who is president of the Chemical Foundation?

"Mr. Wigglesworth. Mr. Garvan was, I understand, president.

"Senator Watson. And who is Mr. Garvan?

"Mr. Wigglesworth. The Alien Property Custodian.

"Senator Watson. So that he is the Alien Property Custodian and at the same time he is president of the Chemical Foundation.

"Mr. Choate. But he is not the Alien Property Custodian who sold the patents.

"Senator Watson. I understand that.

"Mr. Choate. His predecessor sold the patents."

Did you give that testimony?

MR. ANDERSON: That is the testimony of Mr. Wigglesworth, if your Honor please. There is no testimony there by Mr. Choate; not a word.

MR. KRESEL: Mr. Choate made the statement.

MR. ANDERSON: But the preceding statement, questions by Senator Watson and replies by Mr.

Wigglesworth. Certainly we can not read Mr. Wigglesworth's evidence in this case.

MR. KRESEL: I did not ask him about Mr. Wigglesworth. I asked him if he so testified. I read the Wigglesworth portion because otherwise it would not be understood at all; simply for introductory purposes.

MR. ANDERSON: Let us get that clear. Mr. Wigglesworth was on the stand; Mr. Choate sitting by as counsel for either the Chemical Foundation or the Dyes Institute, I think he testified there, put the statement in the form of a question to Mr. Wigglesworth or to Senator Watson, and then makes a statement himself in Mr. Wigglesworth's testimony.

THE COURT: Where did you begin reading, Mr. Kresel?

MR. KRESEL: I began reading with the question by Senator Watson reading as follows: "And who is president of the Chemical Foundation?" Mr. Wigglesworth answers: "Mr. Garvan was, I understand, President." "Senator Watson. And who is Mr. Garvan?" "Mr. Wigglesworth. The Alien Property Custodian."

MR. ANDERSON: How can that go into the record?

MR. KRESEL: Simply as introductory to the statement made by Mr. Choate.

MR. ANDERSON: I object to Mr. Wigglesworth's testimony going into the recod, sir, without calling Mr. Wigglesworth.

MR. KRESEL: All right, I will omit those two answers by Mr. Wiggesworth. I read the question by Senator Watson:

"Senator Watson. So that he is the Alien Property Custodian and at the same time he is president of the Chemical Foundation."

I assume you will concede that Senator Watson was talking there about Mr. Garvan?

MR. ANDERSON: I will.

MR. KRESEL: All right.

"Mr. Choate. But he is not the Alien Property Custodian who sold the patents?

"Senator Watson. I understand that.

"Mr. Choate. His predecessor sold the patents.

"Senator Watson. But he is the Alien Property Custodian at this time?"

Those are the three or four paragraphs that I am now asking the witness as to whether he made the statement on those occasions as read.

THE COURT: The statements there credited to him?

MR. KRESEL: To him.

MR. ANDERSON: In addition to the objections already raised, I object on the ground that the record discloses that Mr. Wigglesworth was under examination. The record discloses that Mr. Choate was there as Counsel for the American Dyes Institute.

THE COURT: May I ask: Is this the case where Mr. Choate was stating facts and not testifying to facts?

MR. ANDERSON: This is the case where he asked Senator Watson——

THE COURT: No; I gathered the impression from your remarks and some statements that have gone before in the trial of this case that before one of these committees Mr. Choate was not on the stand but did make certain statements to the committee not under oath. I was wondering whether this was the one or not.

THE WITNESS: Did your Honor ask me to answer that?

THE COURT: Yes.

THE WITNESS: If your Honor please, none of the testimony in any of these hearings except that before the committee referred to here as hearings before the sub-committee of the Committee on the Judiciary of the United States Senate, in 1922, were under oath. The testimony before the Congressional committees is not, as a rule, taken under oath. So that all my statements made to the Senate Finance Committee and the House Ways and Means Committee were on a par. None of them were under oath, and in many cases questions were asked of me casually in the midst of the examination of other witnesses, and were then answered.

MR. ANDERSON: Then I object on the further ground that the witness is undertaking to testify as to when the patents were sold and by whom, when that is a question of law to be drawn from the facts and not testified; and on the further ground that it has no relation to the cross-examination.

THE COURT: My views have been stated. I will not repeat them. It will be admitted under our general rule.

RDQ. 94. I direct your attention, Mr. Choate, to page 94 of this volume of hearings before the Committee on Finance on H. R. 8078, beginning with the paragraph which reads as follows: "In the first place, the dye industry makes a greater number of different products, I suppose, than any other industry in the world." That is as much of that paragraph as I shall read, to and including the end of the first paragraph on page 102 thereof; and I ask you whether you made the statements that are set forth on the pages that I have indicated.

MR. ANDERSON: If your Honor please, this

statement is simply a re-statement of some of the things contained in the Palmer report about the conditions in the dye industry prior to the war, about which I did not ask the witness a single question. It is not explanatory of them. It contains no limitations upon them. It has no connection with anything that I have asked him about. It contains in it an article by Mr. Burr from the quarterly review of July, 1919 on the German business in the United States, and the last two pages of it are a statement by Mr. John P. Wood, or a considerable part thereof, of the American Association of Woolen and Worsted Manufacturers.

If that can go into the record under the idea of explaining or enlarging or completing what I read, when it has no more connection with it than the history of the Peloponnesian War, is going pretty far, and I want to object very earnestly on all the grounds stated and those now stated to putting that into the record.

THE COURT: Mr. Kresel, what in your view is the relation of the matter now offered to that read from Mr. Choate's statements by Colonel Anderson on cross-examination?

MR. KRESEL: Your Honor will recall that a number of the statements read from Mr. Choate's testimony and statements by Colonel Anderson, referred to the question of price. You remember he read the statement about the price being a guess, and so on.

THE COURT: Yes, I recall that.

MR. KRESEL: Now on the pages that I have indicated, Mr. Choate sets forth a statement of the different colors that were manufactured. He sets forth the nature of the various dyes and gives an account of the difficulty in producing them.

THE COURT: The purpose being to show that the use of the word "guess" was not in its ordinary significance, but as indicating that——

MR. KRESEL: There was no direct way of arriving at the value.

THE COURT: —that an estimate of value of patents can not be as accurate as one on tangible property; is that the purpose?

MR. KRESEL: Yes, your Honor: And then may I further point out that in these extracts that I am now offering Mr. Choate is showing the large extent of the business of the Badische Company and the Bayer Company in Germany, which, of course, has a direct bearing upon the question of value, inasmuch as Mr. Choate pointed out that any industry which would be built up here would have to be in direct competition with the German industry abroad.

THE COURT: You have indicated you differ.

MR. ANDERSON: I differ entirely, sir; but I also want to call attention, in addition, to page 101, which is included, where the following appears:

"Mr. Wood. Mr. Chairman, in order that it may come in at the appropriate place in the record, may I make a statement about this condition of affairs that I think will be very important to the committee as bearing directly on this subject you are considering?

"Mr. Choate. If it will not take too long.

"Mr. Wood. It will only be momentary.

"Mr. Choate. All right.

"Senator Watson. Please state your name?

"Mr. Wood. John P. Wood, of Philadelphia; woolen manufacturer. I represent this committee of the American Association of Woolen and Worsted Manufacturers. For some 30 years" and so forth. Mr. Wood goes on to make a statement.

MR. KRESEL: If your Honor please, it is so set forth in the statement here that it was not easily distinguishable that Mr. Wood interrupted here; but it is only one paragraph and I am perfectly willing to have it cut out.

MR. ANDERSON: Then he goes on to say that what Mr. Choate said is true; so we are backing it up with somebody else's statement.

MR. KRESEL: Mr. Choate resumes his statement.

THE COURT: We are not going to discuss it. I am going to admit it under the general rule for the purposes as indicated at the beginning of the re-direct examination of Mr. Choate.

MR. KRESEL: The portion beginning with the second paragraph on page 101, reading: "Mr. Wood. Mr. Chairman, in order that it may come in at the appropriate place in the record," etc., down to the paragraph on that page ending with the words "as it did the foreign business" are not to be considered as a portion of what I have offered.

THE COURT: All the objections stated with respect to this and preceding statements of Mr. Choate before the committees are noted here and the questions are taken under the general rule.

THE WITNESS: Have I answered the question?

RDQ. 95. I am asking you Mr. Choate, whether you made the statement as appears on those pages?

A. I did.

RDQ. 96. I now direct your attention to page 113 of this record, beginning with the paragraph which was read in by Colonel Anderson, reading as follows:

> "We came to the conclusion that the patents could not have been held idle like that for any purpose, except to prevent, on the one hand, American manufacture and, on the other, imports from possible competitors abroad."

And going from there to page 117, ending with the paragraph the last sentence of which reads as follows:

> "And the charter provides that except for a six per cent. return on the preferred stock—which is to be retired as fast as it can be—and a dividend limited to six per cent. on the common stock if earned, the entire funds produced by the Chemical Foundation must be used for purposes of the advancement of science and industry in the United States."

And I ask you whether you testified as is reported on those pages?

MR. ANDERSON: Objected to for the reasons already stated, except so much thereof as was read on cross-examination, which includes a part of what I read.

THE COURT: The same ruling.

RDQ. 96. (continued) You may answer.

A. I did.

RDQ. 97. I direct your attention to page 124 of this record. Colonel Anderson read in beginning with the first question on that page down to and including the second question and answer thereof. I now ask whether you gave this testimony and I read the immediately succeeding question and answer, succeeding that which Colonel Anderson read in, to wit:

By Senator Watson:

"Do you contend it is necessary that your institution should survive in order to perpetuate the dye industry in this country?

"Mr. Choate. I do not. But I do imagine it is a very valuable institution, for this reason, among others. If it is desirable that the vat dyes shall be manufactured in this country, for instance —I mean the whole group of patented dyes—the Chemical Foundation can render some assistance in that line, because by demanding the payment of royalty on foreign goods, or if necessary seeking to enjoin their sale, it can to some extent af-

ford protection. That will eventually be possible after the patents are adjudicated, if they are any good. But unless the patents are protected, are fought, litigated and enforced they are absolutely worthless to anybody. The owner has got to protect them, and for that purpose must have and spend money."

Did you make that statement?

A. I did.

THE COURT: This is all subject to your objection and exception, Colonel Anderson.

Extracts from Hearings before the Committee on Finance of the United State Senate received in evidence and marked "Defendant's Exhibit No. 142." (*See Exhibits, Vol. V, page 2764.*)

RDQ. 98. Colonel Anderson read to you from page 528 of the hearings before the sub-committee on the Judiciary, with reference to your trip to Paris as representative of the American Dyes Institute. Was that the capacity in which you went?

A. It was.

RDQ. 99. You say, "The information which the legislative committee had received was included in a report made by Mr. Edward S. Chapin, the Paris representative of the Textile Alliance, to the Advisory Committee of the Department of State. This report was printed and bears date September 29, 1920, and I offer this copy of the printed copy of the report for the consideration of the Committee."

"The Chairman. It will be received and marked as an exhibit."

Then the next sentence reads as follows:

"The report referred to was marked 'Choate Exhibit No. 2, not copied'."

Have you a copy of that report available?

A. I haven't it here. I think I probably have it

in the office. If not, I can doubtless secure a copy for you.

MR. KRESEL: At this time, if your Honor please, I offer in evidence a copy of that report. I haven't it here. I should like to reserve the privilege of producing it as soon as I can get it.

THE COURT: The report is what?

MR. KRESEL: It was a report made by Mr. Chapin, the Paris representative of the Textile Alliance to the Advisory Committee of the Department of State.

RDQ. 100. It was with reference to these reparation dyes, was it?

A. Yes.

MR. KRESEL: As to which Mr. Choate made this trip to Paris about which he was questioned by Colonel Anderson.

THE COURT: How is that relevant, Mr. Kresel? I do not follow you.

MR. KRESEL: If Mr. Choate's trip to Paris on this matter is at all relevant, then the report embracing the results of the trip is material.

THE WITNESS: Mr. Kresel, I think you are mistaken in your understanding of this situation.

RDQ. 101. If I am, I wish you would correct me.

A. The Chapin report was a report to the Advisory Committee of the State Department, which stated the conditions that existed in regard to the treatment by the Reparation Commission of the dye question. That report was what alarmed the Dyes Institute in regard to the situation and led them to ask me to go.

MR. KRESEL: Now, there you are. Apparently Colonel Anderson puts some importance on the fact that Mr. Choate made this trip to Paris for the American Dyes Institute. I want to have before the Court the situation that called forth the

request that Mr. Choate make this trip. If one is material, the other certainly is material.

MR. ANDERSON: Under the ruling of the Court, under which we are now proceeding, I can see the relevancy, although I do not concede it and I raise my objection to it, of the paragraph read, from the standpoint of Mr. Kresel. I would be perfectly willing to admit that Mr. Choate went——

MR. KRESEL: You read it in, Colonel.

MR. ANDERSON: I am talking of the paragraph you read. Went over to Paris as representative of the American Dyes Institute in connection with the reparation dyes. But now the question is on the offering of a report by Mr. Chapin of the Textile Alliance on the conditions in Paris and the paper is not even here. I would waive that if it had any standing as evidence and reserve the right to examine it later when presented and offer additional evidence. If we are going into a history of the operation of the Textile Alliance in Paris, we will go into it fully, but Mr. Chapin's report as a representative of the Textile Alliance is certainly not evidence.

THE COURT: Was Mr. Chapin a representative of the Textile Alliance?

MR. KRESEL: Paris representative of the Textile Alliance and the report was made to the Advisory Committee of the Department of State.

THE COURT: I do not see that Mr. Choate's trip to Paris has any relevancy and it seems to me this has even less.

MR. ANDERSON: I might say that my reason for introducing this statement was—and there is no mystery about it—to show the connection between these two corporations and the activities of those corporations. I regarded it as one of the various incidents in that connection, without imply-

ing the slightest suggestion or criticism of Mr. Choate as a lawyer or personally. These various things I pointed out show that connection. What its legal effect is will be a question for argument afterwards.

I am not raising any question that Mr. Choate did not have a perfect right to go to Paris, that he was performing service in going to Paris and that he had a right to serve the Dyes Institute as counsel. I am not raising any question like that. Nor am I raising any question in connection with his trip to Paris. There is a whole lot more about his trip to Paris, telegrams and correspondence that I did not put in. I expressly did not go into his trip to Paris. How he can put in a report by Mr. Chapin of the Textile Alliance is beyond my comprehension.

MR. KRESEL: Your Honor has already indicated your view as to the materiality of Mr. Choate's trip; and of course, if that is your Honor's view, I do not think I shall insist upon putting in the report.

THE COURT: You understand, Mr. Kresel, that is my immediate reaction. If Colonel Anderson can at the argument or at any time prior to decision establish that that is a link of importance in showing the conspiracy, it will be given that value regardless of any statement just made by me. I understand you do not press your offer of Mr. Chapin's report.

MR. KRESEL: I do not, your Honor.

If your Honor please, I am going to ask the Court to let me mark for identification the statements made by Mr. Choate beginning with the paragraph on page 528 of this book containing the Hearings before the Committee on the Judiciary of the Senate which reads, "In September,

1919, the Legislative Committee of the American Dyes Institute communicated with me and stated that they were alarmed by reports" and so on, to and including the paragraph on page 548:

By the Chairman:

"It is only fair to add that the statements made by Senator King were upon information."

The matter just offered for identification contains the statements made by Mr. Choate and the entire line of correspondence with reference to this Paris trip. It may well be that before the close of this case I may renew my offer to have that portion of Mr. Choate's statement and the correspondence that accompanies it put in evidence. All I want to ask the witness now is whether he made the statements on the pages indicated and whether the correspondence which is there printed is correct.

THE WITNESS: I did make the statements and the copies are to the best of my knowledge and belief correct and complete.

Let it be so marked.

Marked Defendant's Exhibit P for Identification, 7/6/23.

MR. ANDERSON: Since I do not know whether counsel is going to introduce it in evidence, of course, I reserve all rights as to that.

THE COURT: You may make the objection at the time it is offered.

MR. KRESEL: That is all.

RE-CROSS-EXAMINATION.

MR. ANDERSON: There is one statement I could not find when I was reading from the testimony, which has been brought to my attention by

counsel's reading of the page, that I would like to ask Mr. Choate about and put in evidence.

I will read a portion of the statement from the Hearings before the Finance Committee on H. R. 8078, beginning at the bottom of page 122.

Question by Senator Watson:

"Are you one of these gentlemen?

"Mr. Choate. I am not a director, but I am of counsel, and I think nothing has yet been done, and nothing will be done that is not concurred in by me."

By Mr. Anderson:

RXQ. 102. You were referring there to the Chemical Foundation, I think it will be conceded?

A. Yes.

Mr. Anderson (Reading):

"Senator Watson. I am not questioning anybody's motives, but looking at it as an outsider, if you thought somebody was coming in to manufacture a particular kind of dye would produce an excess of that particular product in the country, you would shut him out?

"Mr. Choate. I, personally, would not, and I think the decision of the Foundation will be that under no circumstances will any license be refused except when the applicant turns out not to be really un-American, or when he is not qualified to make the product in question.

"Senator Watson. I understood you to say a while ago that if there should be an excess of any one particular product there might be power used to prevent that by your Chemical Foundation.

"Mr. Choate. What I said was that under the charter of the Foundation the directors would have the power to refuse a license to additional applicants under those conditions. We have placed that question before the assembled stockholders who represent 140 leading concerns in the dye industry and in the textile and other industries, and I understand the almost unanimous opinion of

those industries to be that the issuance of licenses ought never to be limited in that manner.

"Senator Watson. No; but the power remains.

"Mr. Choate. The power remains; we could do all sorts of things if we were rascals.

"Senator Watson. That is not the question. Has the Chemical Foundation as such assumed any authority over imports; that is to say, if imports are to come into the country, have they taken any steps to get control of those imports coming into the country in any way?

"Mr. Choate. No; we can not. None of these patents that cover the dyes have been adjudicated, and until a patent has been adjudicated you can not get an injunction.

"Senator Watson. Has any effort been made on the part of anybody connected with the Chemical Foundation to enter into any sort of arrangement so that they can control imports or so that imports come into the hands of men who control on this side?

"Mr. Choate. No, sir. Royalties will be charged against the importer precisely as they will be charged against an American manufacturer in order to provide funds for the purpose for which the Foundation was organized, which are public and altruistic, purely and simply."

My purpose in introducing that was for the earlier part of it, but in order to make the statement complete I have read it all. I think that it all refers to that subject.

THE COURT: Do you want to ask the witness about that?

RXQ. 103. Is that your testimony given at the hearings of this committee held December, 1919 and January, 1920?

A. I gave the testimony which you have read.

MR. KRESEL: In that same connection I offer in evidence the following, which appears at page

122. I begin at the top of the page; but in order to make it intelligible I will have to read the question and answer at the bottom of page 121:

"Senator Watson. But it makes impossible, does it not, the entrance of a new man into the dye business without getting a license from that company?

"Mr. Choate. By no means.

"Senator Watson. On account of the fellows who are in and having the license shutting him out?

"Mr. Choate. Certainly not. The only things patented it has which affect the dye industry are the vat-dye patents.

"Senator Watson. Are these patents all vat-dye patents?

"Mr. Choate. Oh, no. But the only patents that have any material effect on the dye industry are the vat dye patents.

"Senator Watson. Do you say this corporation reserves to itself the right to acquire patents in the future; that is, patents taken out in this country?

"Mr. Choate. It could do it; but it is not the intention of anybody to do it, except to stimulate chemical invention; to offer some kind of a reward to employees in the public institutions who make inventions and who can not benefit thereby, and, on the other hand, by rendering those inventions useful by backing up the inventor.

"Senator Watson. What do you mean by 'backing up the inventor?'

"Mr. Choate. By buying his invention from him, developing it, and protecting it.

"Senator Watson. By buying the patent, and then nobody would be able to manufacture under the terms of that patent except somebody that gets a license from the Chemical Foundation?

"Mr. Choate. Yes. But anybody, practically speaking, can get a license.

Senator Watson. That depends on the will of the trustees, does it not?

"Mr. Choate. I think not.

"Senator Sutherland. Do you grant several patents (licenses) to one party?"

I think that it should read "licenses" under several patents. May the correction be made?

THE WITNESS: I think he probably meant licenses under several patents.

MR. ANDERSON: I think that is probably what he meant.

MR. KRESEL: Then I am going to insert "licenses under" so it will read, "Do you grant licenses under several patents to one party?"

MR. ANDERSON: I am willing to agree that that is probably what he meant.

MR. KRESEL: All right, then, I will strike out the correction. (Continuing reading)

"Mr. Choate. Yes. We have granted several licenses under one of the product patents.

"Senator Curtis. No one can get an exclusive license from you?

"Mr. Choate. He can not.

"Senator Nugent. And no monopoly can be built up?

"Mr. Choate. No monoply could be built up, unless the Foundation was managed by criminals. If they ever get us out and get criminals in it might happen.

"Senator Nugent. And if a man desires to go into the dye manufacturing business all that is required of him is to procure a license?

"Mr. Choate. Whether he is an outsider or an insider he gets a license just the same. We have practically put up now to the stockholders of the Foundation the question of whether it will ever be advisable to limit the number of licenses, in case we find the number has become so great that the market for any patented product is in danger of being completely flooded. In certain cases that question might arise, also, in cases like arsphenamine, where the product is dangerous if made under bad conditions. Their deliberate de-

cision seems to be that no limitation is preferable and that everybody must receive a license."

Did you so testify?

THE WITNESS: I did.

MR. ANDERSON: In order to make the record clear, I will ask if it is understood that my objections to the reading in of the testimony of Mr. Choate, as already indicated by the defendant, apply to the exhibit as well as to the answer of the witness. I wanted to make that very clear.

THE COURT: Yes. Have you had a number assigned to your last extract?

MR. KRESEL: To what I have just read, your Honor?

THE COURT: Yes.

MR. KRESEL: I do not think it is necessary. I have read it into the record.

THE COURT: But you read from three books.

MR. KRESEL: Yes, the third one was only for identification, and that was so marked.

THE COURT: And the remaining portions of it that you are interested in were read in?

MR. KRESEL: Yes, sir. Is that all for Mr. Choate?

MR. ANDERSON: Yes, that is all.

THE WITNESS: One second. There is one passage here which I think was incomplete. (Indicates to Mr. Kresel.)

MR. KRESEL: I did overlook that, your Honor.

Colonel Anderson read in from page 518 of the Hearings before the Committee on Finance, Tariff Act of 1921. I desire to read in three or four questions preceding the portion that Colonel Anderson read in. It is the first question on page 518 of this book:

"Senator McLean. Is this Mr. Garvan related to the Garvan that was subsequently Alien Property Custodian?

"Mr. Choate. It is the same Mr. Garvan. I shall ask leave of the committee hereafter to state the circumstances under which he became president of the Chemical Foundation.

"Senator LaFollette. How long after this transaction—I refer, now, to the purchase of these patents from the Alien Property Custodian in whose office he was then established and a part of your organization—how long after that did he become Alien Property Custodian?

"Mr. Choate. March 4, 1919, when Mr. Palmer was appointed Attorney General.

"Senator LaFollette. How long was that, if you please? Do you have the other date in your mind?

"Mr. Choate. Approximately seven weeks."

THE COURT: Do you want to make an inquiry of the witness about that?

MR. KRESEL: Did you so testify, Mr. Choate?

THE WITNESS: I did so testify. I may say there is an obvious error there, that the period seven weeks is more than actually elapsed. The period was four or five weeks.

THE COURT: All of the objections heretofore made are considered as made to this evidence.

MR. ANDERSON: Yes. I did not make them, but I considered they would be applied to this evidence and the answer thereto.

THE WITNESS: Am I excused now? I believe I am still under subpoena of the Government.

MR. ANDERSON: So far as I am concerned you might have been excused some time ago. I thought you had understood you were released some time ago.

THE COURT: Are you through with Mr. Choate —both sides?

MR. KRESEL: Yes, your Honor.

THE COURT: Then you are discharged from the subpoena.

(Witness excused.)

MR. KRESEL: Your Honor will recall that upon the examination of Mr. Garvan I sought to offer in evidence proof of certain sales of patents made by the Alien Property Custodian to the Government, and the objection was made that we did not have the assignments here. I have since obtained certified copies of the assignments or bills of sale of these patents to the Government, and I now offer an instrument of assignment from the Alien Property Custodian to United States of America, represented by the Secretary of the Navy, dated the 6th day of February, 1919, recorded in the Patent Office on the 10th day of April, 1919, and after it is marked I will state to your Honor briefly what the instrument is.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 143." (*See Exhibits, Vol. V, page 2786.*)

MR. KRESEL: By that instrument, your Honor, the Alien Property Custodian conveyed to the United States Government as represented by the Secretary of the Navy, seventy-two patents and twelve agreements relating to patents, all embracing what are known as the wireless patents, covering the wireless stations that were taken over by the Government—all those seventy-two patents and twelve agreements for $500.

MR. ANDERSON: Of course, this evidence is being taken subject to the general objections.

THE COURT: This is an assignment or license?

MR. KRESEL: This is an assignment.

THE COURT: Of the patents?

MR. KRESEL: Yes, sir.

THE COURT: By private sale?

MR. KRESEL: By the Alien Property Custodian. You see, your Honor, under the act sales to the Government did not have to be even under Executive order, they could be made direct. Your Honor will recall the statute says sales except to the United States shall be made at public auction, or, if the President directs, at private sale. So these sales, your Honor, were just made without anything further being done—of course, not at public auction and even without an Executive order. May I read the conveyance part?

MR. ANDERSON: To get the record straight, I note the general and specific objections already made to this evidence, and point out that aside from the question of authority, which is a question of law, this matter does not relate in any way to the Chemical Foundation or the sale to the Chemical Foundation, and has no connection therewith.

MR. KRESEL: I will read this briefly. (Reads from Exhibit 143 of Defendant.)

The list which is attached, your Honor, contains, as I have stated, a list of seventy-two patents and a large number of these contracts which cover the patents.

THE COURT: Won't you tell me what the purpose of the offer is? I am afraid I am missing it.

MR. KRESEL: Your Honor, the purpose of the offer is to show that at practically the same time that the sale which is here being attacked by the Government as having been made for an inadequate consideration was consummated, the Government was taking over from the Alien Property Custodian properties which are described in this instrument at the valuation that is there described. It is in line, your Honor, with the testimony of Mr. Palmer and Mr. Garvan that these

transfers made to the Chemical Foundation were made under the direction of the President pursuant to a public policy, pursuant to the purposes which the President had in mind, thereby to place these patents in a position where, instead of being a hindrance to the Government, they would be a help to the Government. It is in line with our argument, as we shall contend when we come to argue this case, that the question of consideration, the money consideration here, is of minor importance.

MR. ANDERSON: May I just say a word in reply to that, to enlarge my objection?

THE COURT: Yes, but I would like to ask Mr. Kresel one further question.

MR. KRESEL: Certainly.

THE COURT: Then you may have an opportunity to reply to all that is said, Colonel Anderson. How do I know but what five hundred dollars was the full value of all those patents? I mean was the full commercial value for that assignment.

MR. KRESEL: Well, of course up to the present there is no evidence as to that.

MR. ANDERSON: I simply want to say that, of course, it is conceded that this has nothing to do with the Chemical Foundation. It took place on February 6th when the President was in Paris. Let us suppose that the Alien Property Custodian and the officer of the Navy with whom he dealt in this matter did undertake to establish a policy, to take over alien property for a nominal consideration, for the Government of the United States. Let us suppose that they did do it, the Alien Property Custodian with the best of motive made the conveyance seeking to serve the interests of the country, that the Navy officer who took the

conveyance believed he was serving the interests of the country. We have yet to be referred to any act or any authority of the Alien Property Custodian to confiscate property for the benefit of the United States.

I doubt if any act in the history of the United States appealed more to the people, perhaps, than the taking of Arlington. Is there an instance of a single public service corporation case that goes to the United States Supreme Court, when it can not be demonstrated in the opinion of the public officers who fix a rate below a fair return upon property, that such rate is in the public interest? Has anybody ever questioned in the Courts of the United States the fact that it matters not how great the public interest is or how vital the public interest is, the United States has never adopted the principle that necessity knows no law. I hope it never will. If it does, then the spirit of the invasion of Belgium won this war.

Let us suppose that the United States needed these wireless patents or chemical patents, or any others, that its industry needed them for development. What argument is that that necessity justifies confiscation? That is all it is. And the courts of this country have never listened to that argument for a minute, except in a few isolated cases in the Civil War, which stand upon a peculiar footing of rebellion.

The title of the Government of the United States to these patents and rights, so far as the Germans are concerned, can not be questioned. That question has been settled in a treaty which was dictated by the sword. But as between the officers of the United States, its citizens and its Government, I am standing here in the humble capacity representing the Government of the United

States to say that this Government is too great to claim that its necessities, whatever they may be in war or in peace, permit the violation of the fundamental laws of this country and the principles of justice as between itself and those who have sought its protection and relied upon its protection.

And I quote the President of the United States on that question in every speech he made from the very day we broke relations with Germany down to the day he returned from Paris and was taken ill later. If the Constitution of the United States puts in Congress by express terms the power to legislate for the public welfare and the national defense, even the power of Congress is subject to the limitations of the Constitution, and, as the Supreme Court has so often said, while it may have the technical power to confiscate alien property seized on land, it has always stood against the exercise of that power which for two hundred years no civilized nation has dared to exercise in the face of public opinion, and which this Supreme Court declared in Brown against the United States and in Ware against Hilton was not recognized by international law as a custom today, and that this country adopted international law in its most approved and advanced form.

The idea of standing in a court of the United States and citing as an authority for the sale of property without consideration, in view of the decisions of the courts of this country and of the Supreme Court of the United States, the fact that the officers of the Government themselves took property without consideration. If they did such a thing, it was an absolutely invalid act, so far as their acts were concerned. Whether as between

this Government and the Germans the German can raise it is not material to this issue. But as to anybody that could raise it, if they could, I hope the courts of this country will never be closed to their rights to come into them, and I know they never will be, to question an act of that kind, which has not the slightest element of justice and has for its foundation every principle that Germany asserted in its effort to overthrow the civilization of the world.

If this corporation is going to take that position in the courts, I am ready to challenge it in the name of the United States; for this Government, although it may be powerful, is not above the law and I hope will never be above morality. I object to the introduction of this document.

MR. KRESEL: I have listened very attentively, your Honor, to Colonel Anderson's very impassioned remarks, but I must confess that, interesting as they were, they do not touch the question that your Honor now immediately has before you. The question is as to the propriety of introducing these documents. We urge that they are admissible not only upon the ground that I have already assigned, but also upon the ground that the transaction your Honor has before you is being attacked as the result of a conspiracy. The motives of the officers of the Government responsible for the transaction have been attacked. The consideration is claimed to have been shockingly inadequate.

It certainly is material to show that at the same time the same officials, dealing with similar property, conveyed this property—I do not care to whom, whether it is to the United States Government or anybody else—at prices which the

Government claims are shockingly inadequate and as to which transactions it is not stated that their motives were in any way subject to attack nor any conspiracy charged in connection therewith.

It seems to us that upon that ground alone that evidence is admissible. When we come to argue this case we shall be prepared to meet Colonel Anderson upon the broad principles that are involved, of whether this was or was not confiscation, and, if it was confiscation, whether the power lay in the officers who exercised it to confiscate it. This is not the time to argue that, and your Honor can not decide this question of evidence upon that consideration.

We already have in evidence the conveyance by the Alien Property Custodian or the license by the Alien Property Custodian to the Government on 5700 of these German patents, and a release of the Government from all damages for infringement during the war, all for a consideration of $100,000. That is already in evidence. This is only in line with that other evidence—transactions occurring at or about the time when this transaction that is here being attacked was made, and by the same officials.

What position does the Government take with reference to these transactions? Does it take the position that these were unauthorized, that the Government now has not the title to these properties? Does it take the position that the Government can come in now and set aside these sales? Is it claimed that the license given to the Government on 5700 patents, which cover some of the most valuable inventions with reference to munitions, is invalid and that the Government has not that license now? Or that the Gov-

ernment has not been released of the hundreds of millions of dollars of damages that the Germans might have claimed for infringement of these very patents during the war? Can they blow hot and cold here; can they say on the one hand that the conveyance to us is invalid because not an adequate consideration has been paid, and yet that the conveyance to the Goverment is valid although not an adequate consideration has been paid? Somewhere, somehow, the Government has got to take a position in this case.

Your Honor has been endeavoring to get the Government to define its position as we have been going on. I confess that I am unable to learn what its position is on most important matters. But they will have to define their position sometime or other, and I shall wait with a great deal of interest to find out what position the Government is going to take with reference to the transactions between the Alien Property Custodian and the Government itself with respect to these German patents.

MR. ANDERSON: I can answer that.

MR. KRESEL: But I say now that these documents that I am now offering are admissible upon the grounds that I have urged, quite irrespective of what position the Government may take as to the validity of the transactions that they represent. If Colonel Anderson is ready to answer my inquiry, I shall be very glad to have him do so now.

MR. ANDERSON: My answer to that can be put in one sentence, that the whole business has got nothing whatever to do with this case. We are trying a lawsuit and not investigating the Government of the United States. The issues of this lawsuit are as to whether this was a valid trans-

action or not and when we get to the question of licenses and patents issued by the United States, we will deal with that question. Counsel has asked me a number of questions here and I have tried to answer them. I would like to ask counsel a question. Does he take the position that a sale of this property at a nominal consideration is or is not confiscation? Does he take the position under the Act of Congress that the Alien Property Custodian had a right to confiscate?

MR. KRESEL: I was very clear in defining our position in my opening——

MR. ANDERSON: So was I.

MR. KRESEL: And I will repeat it.

I say, under the act as it stood at the time that this transaction was made, the Alien Property Custodian, acting under the direction of the President, could have sold this property for a consideration whether it was adequate or inadequate.

I further say that the sale made to this Chemical Foundation was for an adequate consideration, as the Court will be asked to find when the evidence is in. I trust that that answers your question.

MR. ANDERSON: I understand counsel therefore to take the position that if he could sell it for an inadequate consideration, he had the power of confiscation. That necessarily follows, because inadequate consideration is necessarily confiscation.

THE COURT: What do you mean by "confiscation," Colonel Anderson? My problem is this. You have used the term "confiscation" and I am not criticizing it. I am only trying to find out just where we are. Yet in the same argument you have told me that Germany has nothing to do

with this because that has all been settled by a treaty. And if I understand you, you are suggesting an impropriety in certain acts because in pressing that attitude we are saying, or it is being said, that the United States is not keeping the faith, that it is acting in violation of international law, that the United States is doing precisely what it accused Germany of dong when it marched into Belgium, ignoring the treaty. Those several positions it may be possible to reconcile without difficulty. My lack of familiarity with this case, notwithstanding I have listened to it with much interest and during a month, has prevented my being able to reconcile those several contentions. I wonder if it would trouble you too much to help me.

MR. ANDERSON: Not at all. I am perfectly willing to do all I can to help out. But, as Mr. Kresel said, your Honor can not carry in mind my opening statement. I thought at that time I had made clear my contentions, but I am perfectly willing to repeat them.

In the first place, you asked me what I mean by confiscation. Confiscation is the taking of property by the Government for public use, or private use if it had the power to so apply it, without compensation to the owner or without fair compensation to the owner.

THE COURT: Compensation to the owner is a matter with which this court is not concerned.

MR. ANDERSON: Let us see if this court is not concerned. The Government of the United States seized this property and held it in its custody and stated in the act of seizure that it should be held in the interest of the United States, I think are the words used, or such other person as Congress might thereafter designate. That is the

effect of it in any event. Therefore, the primary interest in this property, when it was seized and passed into the hands of this Custodian, was in the United States, with the power in Congress either to perfect that into a complete interest or to return the property to its owners subject to such conditions as Congress might impose, if any, or none at all.

Therefore, the primary interest was in the people of the United States after the seizure. But what that interest was, the extent of that interest, or whether there should ever be a common interest in esse or present as distinguished from contingent, to use another expression, was dependent upon such action as Congress might in the future take. That was the status of this property when it was seized.

The interest of the United States, including whatever title it had or right to perfect title, was sought to be transferred to a private owner in the United States for, we will assume, a nominal consideration or at a guess. That was trust property. It was in the hands of the Custodian who was a trustee, whether you call him a trustee or not; because wherever a man holds property outstanding in the name of another, he is a fiduciary.

When the Alien Property Custodian—and I insist again that the President has nothing to do with that phase of it—undertook to divest the contingent interest of the United States and to divest the contingent interest of the owner, which was an actual beneficial interest, in that he had a property interest involved, the title to which had merely been seized and was held subject to whether Congress would in the future return it to him; and all that interest, that property right,

divided as I say in this intangible way between the United States and the original owner, was sought to be conveyed to a private owner, or sought to be conveyed to the United States, either—it does not make any difference in principle here; in the other aspects of the case it does—what was the effect?

The United States had seized this property for custody for the reasons stated in the law, recognized as one of the legitimate things to do in time of war. It never intended to deprive the owner of his property. We will assume that for the sake of argument now. That is an open question here. But by this act of sale at an inadequate consideration or nominal consideration, or if you could do as counsel suggests for no consideration except the general public interest, there was perfected an act of confiscation of the property as against the original owner.

The Government of the United States was charged with the duty and an obligation in that regard, a sacred duty and trust; and therefore it has a right to come into court, although the Germans may not have the right because the United States may stand between them and this transaction so that they can not get by—the United States has a right and a duty to come into court and say, Congress has never determined to confiscate this property and therefore, when you undertook to convey and divest any contingent right of the owner to its return and not return its value in the place of it, in money; or when you undertook to convey it and divest the interest of the people of the United States, and this property is now subject to be held as security for the payment of the debts by Germany, you have in effect

completed an act of confiscation which you were not authorized to do by any law.

Therefore, your act is void and the United States, whether it has a financial interest or not, or whether the enemy can enforce its rights against that act of confiscation or not, as a Government and trustee for all the people and charged not only with its beneficial interests but its honor and its welfare, has the duty to come into court and set aside the unauthorized act of its officers, take this property back into the custody of the United States, and let Congress do what it reserved the power to do and alone has the power to do under the Constitution, to determine what should be the final disposition thereof.

Is that clear, sir? If not, I shall be glad to answer your Honor further.

MR. KRESEL: I do not think it is clear at all, your Honor.

THE COURT: Have you finished, Colonel Anderson?

MR. ANDERSON: I am finished unless your Honor desires to ask me any further questions.

MR. KRESEL: The Government certainly can not confiscate its own property, can it? We can start with that proposition. It is not charged that the Government has confiscated this property, if the Government owned it.

Now, in so far as the Germans' interest is concerned, that is settled by the Treaty. The Government so claims. It can not be confiscation under that treaty. Every act that the Government took in the seizure of this property, if not in its disposition, is claimed by the Government to have been ratified by the treaty. Therefore, it can not be confiscation of the Germans' interest, assuming even that they had an interest

after the seizure; although the courts have held, interpreting this very act, the Trading with the Enemy Act, that the full title, legal and beneficial, passed to the Alien Property Custodian the minute he filed his demand. But assuming that the alien had an equitable right, that has been taken care of by the treaty. How then can it be said that there is any confiscation?

Therefore, I say that Colonel Anderson's argument does not clearly answer the question that your Honor has put.

MR. ANDERSON: It may not satisfy counsel. But if it does not satisfy your Honor, I will try to put it more clearly. The courts have not held that the full title, beneficial and legal, passed, because the courts have held without exception that when the Alien Property Custodian seized this property, he held it as trustee. The full legal and beneficial interest can not be vested in a trustee. In this case, he was a trustee with a *cestui qui* trust unnamed to be determined by Congress when it finally determined its policy as to this property and its return; and therefore the beneficial interest was outstanding continually; the legal title being held in trust for the final beneficiary named by Congress.

MR. KRESEL: I direct your Honor's attention to the decision of Judge Augustus Hand in the case of Junkers against the Chemical Foundation, which as I read the decision expressly holds what I say, that the German has no interest and can not be heard to question the disposition of the property by the Alien Property Custodian; and if he had a beneficial interest, as Colonel Anderson says, the courts of the United States would not grant him relief.

THE COURT: Could the United States have

seized and kept these patents, had there been no sale? And if the United States Government had that power, would the exercise of that power have been confiscation?

MR. ANDERSON: Absolutely, sir.

THE COURT: It would?

MR. ANDERSON: If the United States had seized and kept these patents, which an act of Congress alone could have given it the right to do, it would have been an absolute confiscation of private property if seized on land.

THE COURT: Then the ultimate conclusion from that is that the question of the ownership of these patents and any other property has been settled as between Germany and the United States by the treaty?

MR. ANDERSON: I think the right of Germany to intervene, to come in here and contest that right, has been waived in the treaty. But that does not affect a right as between the United States and its officers and citizens.

THE COURT: That brings me to another question which I have had difficulty with and your last statement gives me even more difficulty; and that is how is the keeping of the faith of the United States internationally involved in this question?

MR. ANDERSON: I will answer that right now.

If this transaction is valid and Congress determines to return all of this property to the Germans, which it must do, unless it is going to confiscate, some time or other, but subject to such conditions as it wants to impose, what can it return? Let us follow it through.

If this transaction is valid—and a sale for one dollar would have been just as valid——

MR. KRESEL: Will your Honor permit me to answer that question?

MR. ANDERSON: I am leaving out the question of consideration, whether it is valid or invalid. On the theory that they had a right to sell it for any price they saw fit, they could sell it for one dollar as well as $250,000 and in my view that is no more consideration than one dollar.

Congress had not determined whether it would return this property or not. Let us suppose Congress determined to return this property, and in the Winslow Bill it did determine to return all under $10,000 in value. What would it return? $40 a patent, less the cost of seizure charged up against it, when those patents are said to control an important branch of the industry of the United States and some of them are proved to have been of enormous value and were then earning an income which would have obtained more than the entire purchase price? Now, what can it return? That amount of money? That can not even be allocated. A patent that was not worth a cent and would expire within a year gets exactly the same as a patent worth a million dollars. Then if Congress perfects the contingent right of the Germans which was left open in the Trading with the Enemy Act into an absolute right to this property, when his property was seized he had something worth a million dollars and when it was returned he had something worth $40—and if that is not confiscation, then we have to wipe out all of the decisions of the Supreme Court of the United States.

THE COURT: Let me ask you this, Colonel Anderson, because you are dealing with a question that causes me much trouble. It has been charged here that the Haber patents did not make such disclosures as would enable the art or those

skilled in the art in the United States to operate them and that it would require a period of development and experiment in order to enable American chemists to use those patents or the processes therein described on a commercial scale.

Let us assume for a moment that that allegation or charge is true. Let us assume for a moment that Dr. Holdermann's testimony from the German's standpoint was true, that those patents were worth to the Germans $17,000,000. And let us assume, in the face of the non-disclosure of the Haber patents and even in the face of scientific knowledge and skill on the part of American chemists, if you will, if such be the fact, that they lack commercial value to an American purchaser; and yet that Congress had vested the Alien Property Custodian with power to sell these patents at public sale to an American purchaser; and let us assume, for the purpose of this inquiry, that the full value of those Haber patents to an American, whoever he was, however rich or well financed he may have been, was the sum of $1000, and that such a sale were made; was or was not such a sale confiscation from the international point of view?

Mr. Anderson: Your Honor is assuming so many predicates that I find it a little difficult to answer your question. It would depend upon a very great many conditions. For instance, your Honor has limited your inquiry to what it would be worth to an American purchaser. Of course, I do not agree to any of the premises that you laid down.

The Court: Don't you agree to this, that Congress did give an unlimited power to sell for full and fair value to an American purchaser? I thought you indicated that the full and fair value

under those statutory provisions was to be ascertained from the American purchaser's standpoint and not from the German owner's standpoint. Am I right or wrong?

MR. ANDERSON: I do not know that your Honor is right on that proposition. I will concede that at the time the sale took place, a German could not be a purchaser, because we had no treaty with Germany; and he was excluded. I do not know whether that sale was limited to American citizens, if the President so determined. That is entirely another question.

THE COURT: I do not follow you there.

MR. ANDERSON: It says that it must be at public auction, except when sold to the United States. I would like to get the exact language of the act.

MR. KRESEL: To the highest bidder, at the place of sale, to an American citizen. Those are the four elements.

MR. ANDERSON: (Reading.) "That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine."

There is not a word said about private sale there, but we have been going on the theory that presumably he could authorize a private sale. If he could authorize a private sale, he could authorize it to be sold to other than American citizens except perhaps there may be limitations in the law. I have not looked at it. He could not have sold it to Germans, although he had a very broad power to license.

MR. KRESEL: But the Court has assumed a public sale.

MR ANDERSON: He could have authorized a sale to an English or French purchaser, let us assume.

THE COURT: I will be glad to hear you, Mr. Kresel, on that.

MR. ANDERSON: Your Honor asked me if I would not concede that predicate and I said no.

MR. KRESEL: The Court's question was, assuming it was a public sale.

MR. ANDERSON: I think the Court and I can probably agree on the question. I am trying to do it.

In the second place, the record discloses here that the United States by virtue of the act of the President himself was authorized to purchase these patents for $10,000 and to expend $350,000 in their development, and the testimony is that the development of one of the plants was dependent upon the acquisition or use of these patents.

Therefore I can not reach any conclusion predicated upon such conditions as your Honor has described. I will only answer your Honor's question generally and it is the best I can do at this time, because I can not analyze a long question like that and reach a conclusion by which I would like to be even temporarily bound. I will say this, that any sale of the Haber patents or any other patents which did not bring a fair value——

THE COURT: Ascertained from what standpoint?

MR. ANDERSON: Ascertained from all the surrounding facts and circumstances at that time, like other value is ascertained, and that means thousands of surrounding facts and circumstances

to be considered. What is the fair value is a conclusion which the Court has got to reach, or a jury, or Commissioners, from all the testimony they can get.

THE COURT: Is it your contention that that fair value is the same whether ascertained from the German standpoint or American standpoint?

MR. ANDERSON: I think that the position of this industry in Germany is one of the important facts to be borne in mind in connection with this fair value; yes, sir. And I further take the position that the mere fact that a German could not bid at this time, since there was no obligation to sell these patents, does not necessarily exclude what a German would have been willing to give if he could bid, because we were negotiating the treaty at that time.

THE COURT: Then if there was a wide gap between the German value, and the American value, the statute, notwithstanding it authorized a sale, by the same token denied the right which it expressly gave.

MR. ANDERSON: No, sir.

THE COURT: Is that not an inevitable conclusion?

MR. ANDERSON: No, sir; it is not. I say that the German value and the value in Germany and the condition of the industry under these patents in Germany are essential facts to be considered in arriving at what was the fair value of those patents. Other facts will also be considered.

When I come to argue this case, I expect—I hope to be able to if I can live through it—to collate and present to your Honor the facts on which I think the value should be predicated. Your Honor may consider some others. I do not know. But your Honor is practically sitting in

the position of a commissioner in condemnation. You have got to find out what was the fair value. You may make a mistake as those commissioners do and the courts may make a mistake.

But the test of this sale is fair value and whenever you get below what the courts ascertain to be fair value, just as in a rate case very often mistakes are made, then it is confiscation.

THE COURT: I do not want to press you, but I miss your conclusion, Colonel Anderson, and in this connection I am going to make an inquiry of you, if you do not mind.

MR. ANDERSON: Not at all.

THE COURT: Because it is a difficult problem to me, though probably to you it may seem very clear. There are numerous complications. If I understand you, the United States could seize these patents and hold them and either give them back to Germany, or it need not.

MR. ANDERSON: It could by confiscating them, yes, sir; provided Congress authorized it.

THE COURT: But could it not seize them and hold them and adjust the price that Germany should be allowed for them at the reparations table?

MR. ANDERSON: I should think it might have done that, and if it gave a fair price, it was not confiscation; but if it did not give a fair price, it would have been to that extent confiscation, the exercise of a power instead of a right.

THE COURT: What I am trying to get at is this: I am not trying to mislead; I am trying to present the situation fully before I ask my question, and if there is any doubt about what I am trying to get at, I would be very glad to have you tell me. But it seems to me if the United States were to keep the patents, then the question as to what compensation should be paid to the German

owners would be a question for determination at the reparations table.

MR. ANDERSON: Not at all, sir. When we negotiated the Treaty of Peace, the Trading with the Enemy Act was in force, and it was presumed by the negotiators, I think, that Congress would exercise its power under that act. Now, the treaty provided that this property might be held as security for the compliance by Germany with certain conditions, obviously indicating that it never intended to confiscate the property and never thought of confiscating the property. It assumed that Congress had the power at any time to waive that provision, and has waived it, as to all property under $10,000, and returned it.

That being true, suppose Congress passed an act that they return all German property; and suppose they had sold this property or had sold a piece of land for ten per cent. of its value, and found the title gone and only ten per cent. in its treasury; and Congress ordered all the property returned; would not the original owner of that property, who, by the final act of Congress, had always been entitled to receive the property and whose right was confirmed. He has turned over $100,000 worth of property. Congress says: "I am going to hold this property, and I reserve the right to determine to whom it goes at the end of the war." He says, "That is all right. I cannot help that. You have got title to it." Congress says, "Now, I am going to give it back to you or I am not going to give it back to you. I have got that power."

Then the war goes on and is over, and peace is made. In the meantime Congress, in the exercise of its discretion, says, "I am not going to hold all this property here. Here are manufac-

turing plants that are useful and ought to be freely operated. Instead of holding that property in the custody of the law in kind, I will sell that property; I will authorize my agents to sell that property, and substitute the proceeds for the property,"—exactly like a foreclosure sale, nothing more or less, or a sheriff's sale; that is all.

Now, where are we? The property has gone from the owner and its proceeds are substituted. Now suppose the agent of Congress, instead of selling this $100,000 worth of property, clearly worth $100,000, sells it for $5000, and puts $5000 in the treasury, and Congress comes along after the war is over and says, "We are going to return all this property to the owners. We only intended to keep it to prevent its being used improperly during the war. We are going to return it," so any owner can come in and get his property; and this man who turned over $100,000 worth of property comes in and finds that he has got a right to receive $5000 worth of property, $95,000 worth of property having been confiscated, of course, there is no other answer to it.

Now, he may have no redress; but the Government of the United States would be in a nice fix if it did not have redress through the courts, because there is where the law of the United States is enforced, and the law never gave the Alien Property Custodian any power to confiscate.

There is your case as clearly as I can see it, and there is where confiscation comes in. It was all inchoate to a certain extent. There were certain undefined conditions surrounding this property until Congress acted; but Congress had the duty, not only to the people of the United States, but to the international honor of the United States to keep this property where it could return that

property in kind, or its full value if it elected to return at all; and nobody has a right to decide that question but Congress.

THE COURT: But the Trading with the Enemy Act did give to the Alien Property Custodian the power of sale, did it not?

MR. ANDERSON: Yes, sir, and the law gives to your Honor the power to sell a railroad in your hands; but you cannot give it away.

THE COURT: Where are we?

MR. KRESEL: I was offering a document, your Honor, when this argument took place.

I now offer in evidence certified copy of an instrument dated the 6th day of February, 1919, which is a conveyance by the Alien Property Custodian to the United States of America, represented by the Secretary of the Navy, of thirty-four patents, for a consideration of $1190.

MR. ANDERSON: Objected to on the grounds previously stated.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 144." *(See Exhibits, Vol. V, page 2797.)*

MR. KRESEL: I now offer in evidence an instrument of assignment from the United States Government by F. D. Roosevelt, Acting Secretary of the Navy, dated the eleventh day of November, 1919, re-conveying to the Alien Property Custodian three of the patents that had theretofore been conveyed by the last Exhibit No. 144, for a consideration of $105.

THE COURT: Admitted, subject to the same objections stated by Colonel Anderson.

Received in evidence and marked "Defendant's Exhibit 145." *(Se Exhibits, Vol. V, page 2801.)*

MR. KRESEL: I now offer in evidence a license and conveyance dated the third day of April, 1920, from the Alien Property Custodian to the United States of America, whereby, for a consideration of $2000, the Alien Property Custodian gives a license to the United States of America on the 72 patents enumerated in the instrument, and also conveys to the Government all rights for damages for infringement of 84 additional patents therein included, and conveys to the United States two patent contracts therein especially enumerated. I want to state that the schedule which is attached to this instrument shows that the patents covered gun sights, periscopes, lenses, and so on, used by the War Department.

MR. ANDERSON: I make the same objections.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 146." *(See Exhibits, Vol. V, page 2803.)*

MR. KRESEL: In connection with the license issued by the Chemical Foundation to the Government under date of November 17, 1921, your Honor will recall that a preceding license, the one dated February 26th, 1921, is therein mentioned and thereby cancelled. In order that the record may be complete, I now offer in evidence that instrument of February 26th, 1921, which is now marked "Defendant's Exhibit K for Identification."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 147." *(See Exhibits, Vol. V, page 2811.)*

THE COURT: We will now take the usual recess.

(Recess until 1 o'clock P. M. Standard time.)

AFTER RECESS.

MR. KRESEL: Before I call a witness, your Honor, I have two more exhibits I would like to offer at this time. Your Honor will recall that Colonel Anderson asked Mr. Garvan yesterday whether there were any licensees of the Chemical Foundation that were not stockholders.

THE COURT: Yes.

MR. KRESEL: I offer in evidence a list of licensees of the Chemical Foundation who are not stockholders thereof. Colonel Anderson, you have examined that.

MR. ANDERSON: Yes, I have seen it. I have not examined it, but I have seen it.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 148." *(See Exhibits, Vol. V, page 2837.)*

MR. KRESEL: I also offer a list of those licensees who are stockholders, just to make it complete.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 149." *(See Exhibits, Vol. V, page 2841.)*

MR. KRESEL: Colonel Anderson, I want to put in this letter from Admiral Grayson. Your Honor will recall that upon the examination of Mr. Palmer I desired to put in evidence a letter received by Mr. Palmer from Admiral Grayson, but upon objection that was not permitted. I understand that Colonel Anderson is now willing to concede that if Admiral Cary T. Grayson were called as a witness here, he would testify that upon the trip to Europe made by President Wilson, on which trip Admiral Grayson accompanied the President, leaving New York, March 4, 1919, Admiral Gray-

son had with him a copy of the report which is now Defendant's Exhibit 30, which is Mr. Palmer's report, which had been given to him by Mr. Palmer; and that he would testify further with reference to that report as follows: That he read the report; that the President did not get an opportunity to read it on the *George Washington*, as he was sick part of the time going over and was confronted with such an accumulation of correspondence and official documents that it was impossible for him to examine the report, but that Admiral Grayson read the report and told the President in detail about the contents, and that the President agreed that it was a wonderful accomplishment.

I have paraphrased the statement contained in Admiral Grayson's letter which Colonel Anderson has, and I now ask to introduce the copy of the letter from Admiral Grayson to Mr. Palmer upon this subject.

MR. ANDERSON: In order to save the necessity for calling Admiral Grayson, and in convenience to him, the Government does not object to the introduction of the letter with the same force and effect as if Admiral Grayson testified to its contents, but subject to the general and specific objections which would apply to Admiral Grayson's letter if he testified to the contents. It agreees also that the reference to the report, as contained in the second paragraph, first line, of the letter is the report of Honorable A. Mitchell Palmer as Custodian, introduced in evidence as Defendant's Exhibit No. 30.

THE COURT: Admitted under those circumstances.

Received in evidence and marked "Defendant's Exhibit No. 150." *(See Exhibits, Vol. V, page 2843.)*

THE COURT: Does your agreement go so far as to indicate to whom this letter is addressed?

MR. KRESEL: Yes, the letter is addressed to Mr. Palmer.

MR. ANDERSON: Of course, the letter speaks for itself, and the agreement is that he would testify to the contents of that letter.

THE COURT: That he sent the letter and the facts therein stated are as stated there.

MR. ANDERSON: That he would testify to the facts therein stated; but subject to the general and specific objections.

MR. KRESEL: I just read this one paragraph:

"Unfortunately, the President did not get an opportunity to read it on the *George Washington*, as he was sick part of the time coming over, and he was confronted with such an accumulation of correspondence and official documents that it was impossible for him to examine your report. However, I told him in detail about the contents, and he agreed that it was a wonderful accomplishment."

THE COURT: And the date of the letter is what?

MR. KRESEL: April 17, 1919, dated in Paris.

Now, Dr. Volwiler, will you take the stand, please?

ERNEST H. VOLWILER.

ERNEST H. WOLWILER, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Will you please state your full name and your residence and your profession?

A. Ernest H. Volwiler, chemist, of Chicago, Illinois.

Q. 2. By whom are you now employed?

A. The Abbott Laboratories of Chicago.

Q. 3. Have you received any degrees from any universities?

A. I have. I received a degree of Bachelor of Arts at Miami University which is in Ohio and a degree of Doctor of Philosophy from the University of Illinois.

Q. 4. Since your graduation from the university and before you became employed by the Abbott Laboratories, what did you do?

A. For a period of about three or four months I was instructor in Miami University in chemistry and during the period from 1914 to 1917 I was instructor in organic chemistry at the University of Illinois.

Q. 5. How long have you been with the Abbott Laboratories?

A. Something over five years.

Q. 6. What is the business of the Abbott Laboratories?

A. The manufacture of pharmaceuticals and intermediates for the production of pharmaceuticals.

Q. 7. Has it a large business in that field?

A. It is one of the largest in the country and it is very near the top in the manufacture of synthetic organic medicinals.

Q. 8. Will you please, in a few words, define to us what is meant by synthetic medicinals?

A. I will do that by differentiating between those and the other classes of medicinal products. On the one hand we have naturally occurring products like the alkaloids, morphine and so on, cocaine, and on the other hand we have the synthetic products which are made from materials the same or similar to those used in the manufacture of dyes. In that class there are

ing, and that he did represent the American Dyes Institute at that hearing.

MR. KRESEL: Without repeating the grounds of our objection, your Honor, may it be noted we object to this reading upon the same grounds as urged to the other.

THE COURT: And all statements made before this or any other committee I assume to be objected to on the same ground?

MR. KRESEL: Yes, your Honor.

THE COURT: The same ruling.

At page 528:

"THE CHAIRMAN: Yes, you may proceed.

"MR. CHOATE: Of course, Mr. Chairman, I have been familiar with almost all of the activities of The Chemical Foundation from the beginning, because I had a part in its organization, and also in the action of the Alien Property Custodian with reference to it. That matter has been so fully covered by Mr. Garvan that I assume, except possibly in the way of cross-examination, you will not wish to ask me any questions in regard to it. Everything has been stated accurately by Mr. Garvan and the others, and documents relative to the subject have been produced. I shall not, therefore, go into that except in answer to questions.

"In regard to the activities of the American Dyes Institute, I also conceive that the entire ground has been covered, with the exception of the references made by Senator King to the trip to Paris which I undertook for the American Dyes Institute in the Autumn of 1920. I do not know that Senator King made any definite statements in regard to that trip, but I felt that what he said makes it appropriate that that trip should be explained.

"THE CHAIRMAN: You went as the representative of what company or association?

"MR. CHOATE: Of the American Dyes Institute. I had been counsel for the American Dyes Institute since the spring of 1919; retained by

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them to present to the Congress and the appropriate committees the case for special protection for the American Dye Industry, and in that capacity I had a part in all of the legislative activities; and I shall be very glad, of course, to answer any questions which may occur to you as to any of those activities. I think, however, they have been sufficiently explained to date.

"In September, 1919, the Legislative Committee of the American Dyes Institute communicated with me and stated that they were alarmed by reports which they had received as to the activities of the Reparation Commission under those sections of the Versailles Treaty which gave the Reparation Commission certain powers in the matter of dyes. The information which the Legislative Committee had received was included in a report made by Mr. Edward S. Chapin, the Paris representative of the Textile Alliance, to the advisory committee of the Department of State. This report was printed and bears date September 29, 1920, and I offer this copy of the printed copy of the report for the consideration of the committee."

It was received and marked as an exhibit.

In the absence of my memorandum, I will not read further at this time from these hearings. I may find something else that I want to put in later.

I will ask to call Colonel Herman A. Metz.

HERMAN A. METZ.

HERMAN A. METZ, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Will you please state your name, age, residence and occupation?

A. My name is Herman A. Metz; age, going on 56; New York City, Borough of Manhattan. I am President of H. A. Metz Laboratories and other corporations.

Q. 2. You say you are President of H. A. Metz Laboratories and other corporations. Will you state more fully what other corporations and the business generally of those corporations?

A. H. A. Metz Laboratories are manufacturers of pharmaceutical products. The Consolidated Color & Chemical Company, of which I am President, manufactures dyestuffs and intermediates, and other incidental compounds for textile purposes.

Q. 3. Out of consideration for the stenographer, I will ask you to talk as slowly as you can, without interrupting your thoughts.

A. The Central Dyestuff & Chemical Company, Newark, New Jersey, of which I am Vice-President and Treasurer, manufactures dyestuffs and intermediates. The Textile Leather Company, of which I am President, makes artificial substitutes for leather. There are several others, Colonel, if you want me to give them to you.

Q. 3. (Continuing.) Go ahead.

A. H. A. Metz & Company, Incorporated, dealers in dyestuffs and chemicals.

I am a director in the Interborough Rapid Transit Company, New York City, representing the public, I might say incidentally, not as a stockholder. There are a number of others, not allied with dyestuffs and chemicals.

Q. 4. Have you held any public office?

A. Yes, sir.

Q. 5. By election or otherwise; if so, state what?

A. I was elected Comptroller of the City of New York. I was a member of Congress and was appointed on various Commissions and Boards.

Q. 6. How long did you serve as Comptroller of the City of New York?

A. Four years.

Q. 7. During what time?

A. 1906 to 1910.

Q. 8. Where were you born?

A. New York City.

Q. 9. How long did you serve in Congress, and at what time?

A. Sixty-third Congress, 1913 to 1915.

Q. 10. How long have you been engaged in or connected with the business of the manufacture of pharmaceuticals and other similar products to which you refer?

A. The manufacture, only since 1916; but the handling and importing and selling for about forty years.

Q. 11. You have been handling, importing and selling these products for about forty years?

A. Over forty years connected with the firms doing it.

MR. KRESEL: I did not get that last statement.

THE WITNESS: Connected with the firms doing it. I started as office boy in the firm originally.

Q. 12. Your whole life, then, has been devoted to this business?

A. Yes, sir.

Q. 13. Have you ever studied chemistry?

A. Yes, sir.

Q. 14. Are you a chemist?

A. I am not a chemist, but I studied chemistry.

Q. 15. State what your experience has been as a student of chemistry?

A. I was a student at Cooper Union about four years. I was assistant in the laboratory for at least two years and I worked in the laboratories and plants

after that right along until a few years ago. I got out a number of chemical patents.

Q. 16. What training other than you have stated have you had in practical chemistry, and in connection with pharmaceuticals, the manufacture and sale thereof?

A. Well, seeing the processes carried out, helping to carry them out, devising methods, and running the business successfully.

Q. 17. Have you engaged as a merchant in selling these supplies?

A. Yes, sir.

Q. 18. How have you sold the supplies? I mean do you sell wholesale, retail, or what?

A. Any way people want to buy.

MR. KRESEL: Which supplies are these, Colonel?

MR. ANDERSON: I referred to pharmaceutical supplies which he has imported or manufactured.

MR. KRESEL: Pharmaceuticals only, you are talking about?

MR. ANDERSON: I am talking about pharmaceuticals and supplies which he has described in an earlier answer as being manufactured by him —medical supplies and pharmaceuticals.

THE WITNESS: Pharmaceuticals that were sold—

MR. KRESEL: Pardon me a minute, I want to get this straight. The witness has stated, as I understand it, that he has dealt not only in pharmaceuticals, but also in dyestuffs.

MR. ANDERSON: Yes.

MR. KRESEL: I simply want to know what it is he is now talking about.

Q. 19. Having heard the suggestion of counsel, Colonel Metz, I would ask you to state to the Court briefly but comprehensively the character of your prac-

tical experience in handling the dyestuffs or chemicals or pharmaceuticals, indicating which as far as you can, the sale and disposition thereof. I want to get your practical experience, a general view of it.

A. The pharmaceuticals are sold to the Government, State Boards, hospitals, wholesale druggists, retail druggists and physicians direct.

Q. 20. For how long a period?

A. Ever since I have been in business practically. Even since we first took up the handling of pharmaceuticals.

Q. 21. When you speak of pharmaceuticals you include medical supplies and chemicals used in medical supplies, do you.

A. Yes, sir.

Q. 22. You spoke of having connection with the dyestuff industry?

A. Yes, sir.

Q. 23. To what extent, practically, have you dealt with or had dealings with that?

A. I travelled for ten or fifteen years among the mills selling direct to the consumers, manufacturers of woolen, cotton, silk, paper, leather and other goods that use dyestuffs. I sold myself in the mills, demonstrated the use of them in the mills, and supervised the selling by a corps of salesmen in the branch houses.

Q. 24. By those mills you are now referring to dyes and dyestuffs mills?

A. Dyestuffs and mill products.

Q. 25. Did you, prior to the war, import and distribute or sell in this country products disposed of under the trade names of salvarsan, neo-salvarsan, and novocaine, or any of them?

A. All three of them.

Q. 26. All three of them?

A. Yes.

Q. 27. For approximately how long a period did

you engage in the importation, sale and disposition of these articles?

A. I believe they appeared in the market first about 1911 or 1912, these products.

Q. 28. How long did that period of importation continue; was it stopped by the war?

A. Well, it was not stopped until 1916, November, 1916, I obtained the last shipments from Germany on British permits allowing them to pass the blockade.

Q. 29. After the United States went into the war, did you or any of your companies, and if so, state which, apply to the Federal Trade Commission for license to use the patents or trade-marks, under Section 10, of the Trading with the Enemy Act?

A. After the Trading with the Enemy Act was passed my companies applied for licenses to manufacture the three products.

Q. 30. Could you state the numbers of the licenses issued to you by the Federal Trade Commission? I will state that all these documents are in evidence and I will have you identify them as soon as I can get them.

A. I was granted license No. 3 for making salvarsan, No. 3-A for making neo-salvarsan, and No. 4 for making novocaine, granted to the Farbwerke-Hoechst Company, the name under which I was doing business at that time.

Q. 31. When, approximately, was that. We will identify the actual date.

A. That was, I think, the beginning of 1918 when they issued the licenses. They were all cancelled and new ones taken by H. A. Metz Laboratories, Inc.

Q. 32. Do you recall the dates that the transfer was made from the first company that you mentioned to the second?

A. No, but the record will show. I obtained licenses 34, 34-A and 35 in lieu of the original licenses.

Q. 33. Do you know the numbers of the licenses last issued to the—

A. Yes, sir, 34, 34-A and 35.

Q. 34. Those were issued to whom?

A. H. A. Metz Laboratories, Inc.

MR. ANDERSON: I will have to wait until I get those.

THE WITNESS: I have certified copies, Colonel, of the licenses. The originals were here yesterday. I saw them here yesterday.

THE COURT: The witness says he has certified copies.

MR. ANDERSON: They are not full licenses. I have looked at them. They do not carry the patents and the exhibits, and they are the ones that we wanted.

THE WITNESS: The originals do.

MR. ANDERSON: I have sent for the originals, and I will use them as soon as I get them.

Q. 35. While waiting for those papers, I wanted to ask you, whether in addition to the pharmaceuticals you spoke of and your importing business prior to 1916, did you manufacture dyestuffs, and if so, to what extent, generally?

A. I manufactured dyestuffs in the Consolidated Color & Chemical Company and in the Central to more or less large extent before 1916, but not prior to 1914.

Q. 36. Between 1914 and 1916, you manufactured?

A. We increased daily our manufacture in our line of colors.

Q. 37. How long did you continue that business?

A. Up to date.

Q. 38. You still continue that business?

A. Oh, yes.

Q. 39. And are you president of that company?

A. I am president of the Consolidated, and vice-president and treasurer of the Central, and I am interested in others, but not as an officer.

Q. 40. I believe you said, Colonel Metz, that the original licenses issued by the Trade Commission to one of your companies, the name of which I do not recall—

A. Farbwerke-Hoechst Company.

Q. 41. Were?

A. Surrendered.

Q. 42. —were surrendered by you?

A. By me, and the new ones taken; that is, the new corporation which started just before we went into the war.

Q. 43. And the new licenses were taken out as a re-issue by the H. A. Metz Laboratories, Inc.?

A. Yes, sir, and now manufacturing.

Q. 44. You still hold those licenses, do you?

A. Yes, sir.

Q. 45. There was introduced in evidence on yesterday an original, and substituted a photostat copy of Federal Trade Commission license No. 34-A, issued to H. A. Metz Laboratories, Inc., under patent No. 13,848 re-issue?

A. That is neo-salvarsan.

Q. 46. The re-issue patent being dated December 15, 1914, the date of the license being July 1, 1918. I will ask you if you would examine that and see if that is one of the licenses to which you refer as having been issued to the H. A. Metz Laboratories, Inc., upon the surrender of your original license?

A. That is a certified copy of the license.

Q. 47. And you still hold that license?

A. Yes, sir.

Q. 48. That is, the H. A. Metz, Inc.?

A. I am working under it. That is the neo-salvarsan. H. A. Metz & Company.

MR. ANDERSON: H. A. Metz Laboratories, Inc. Thank you very much.

THE WITNESS: Mr. Choate knows more about my affairs than I do.

Q. 49. Now, there was another license introduced in evidence of yesterday, No. 34, under patent No. 986,148, dated March 7, 1911, date of the license July 1, 1918. Is this No. 34 the license issued to your Company in lieu of the original license of 1918 issued to your former company and which you surrendered for transfer?

A. Yes, sir. This was for salvarsan.

Q. 50. There was also introduced in evidence on yesterday a license by the Federal Trade Commission, No. 35, under patent No. 812,554, dated February 13, 1906, date of the license July 1, 1918. Is that one of the licenses issued to the H. A. Metz Laboratories, Inc., to which you referred in lieu of the original license issued to another corporation you described, and surrendered?

A. Yes, sir. That is for novocaine.

Q. 51. The three licenses which I have just had you identify are the three licenses of the Federal Trade Commission under which you now operate?

A. Yes, sir.

Q. 52. There were introduced in evidence on yesterday the original exhibits of three licenses issued by the Federal Trade Commission to Farbwerke-Hoechst Company, which licenses were issued under the following patents, that is to say: No. 3 under patent No. 986,146, dated March 7, 1911, date of license, November 26, 1917; No. 3 (a) under patent No. 13,848, re-issue, dated December 15, 1914; and No. 4, under patent No. 812,554, dated February 13, 1906, date of license, December 17, 1917; these three licenses being identified in evidence respectively as follows:

No. 3 as Plaintiff's Exhibit No. 220; No. 3 (a) as Plaintiff's Exhibit No. 221; and No. 4 as Plaintiff's Exhibit No. 222.

Will you take those three papers and state whether they were the three licenses oiginally issued to that company as you have testified?

A. They are the copies of the licenses originally issued and are similar to those later issued, except that I believe the conditions for testing were somewhat changed later on in the later licenses by the Public Health Service; and made a little more stringent.

Q. 53-54. And such changes will appear on the faces of the licenses?

A. In the faces of the licenses. I think they were changed before the new ones were issued.

Q. 55. I will ask you to take these licenses which you have identified, both the original issue and the subsequent issue, and state what you did under those licenses of the Federal Trade Commission and each of them?

MR. KRESEL: I have to object to such an indefinite question.

Q. 56. State what you did when you got the license. I will put it that way.

MR. KRESEL: He may have gone around the corner and bought something, but that is not material. It seems to me you ought to ask him some specific question.

MR. ANDERSON: I will ask him a specific question, if your Honor please, but if I should ask him a specific question, from my experience, I am afraid counsel will object. I therefore ask him to state what he did.

THE COURT: Would you mind telling me, Colonel Anderson, what you propose to bring out by this group of questions.

MR. ANDERSON: I propose to bring out that this witness proceeded to exercise his rights under these licenses by doing the things therein authorized to be done and as a manufacturer or seller of this material, he carried on certain business. It has been objected to and I recognize that this kind of an examination is necessarily very technical. To ask him for his conclusion is one thing. To ask him what he did is another.

MR. KRESEL: Of course, Colonel, if that is the purpose, I have no objection. I do not want to hamper you by keeping you down to any particular frame of question, but I simply wanted to be sure that we were not giving Mr. Metz the entire field; that is all.

MR. ANDERSON: No, all I wanted Mr. Metz to do was to say what he did under these licenses.

THE COURT: Whether he operated under these licenses or not.

MR. ANDERSON: Whether he operated under them has been suggested is a conclusion. So I asked him what he did.

MR. KRESEL: I have no objection to putting the question in that form.

THE COURT: You say you have no objection. Does that go to substance as well as form?

MR. KRESEL: Yes.

A. I continued to operate; I was operating prior to the licenses and continued the manufacture of the goods described in the licenses and to sell them.

Q. 57. Take each license and tell what you did as a licensee under that license?

A. Under license 3, I manufactured salvarsan. Under 3-A and 34-A I manufactured neo-salvarsan. Under 4 and 34 I manufactued novocaine—or rather 35. No. 4 was neo and 35 was novocaine—4 and 35.

Q. 58. What did you do with the product so manufactured?

A. Sold them to the consumers, to the Government, physicians, hospitals.

Q. 59. Did you sell it under any trade name or trade-mark?

A. Yes, sir; under the conditions of the license I was allowed to use my trade names in addition to the one prescribed by the license.

Q. 60. What trade name or trade-mark did you use in each case?

A. Under licenses 3 and 34 I used salvarsan and the generic name "arsphenamine" which was prescribed by the Public Health Service. Under license No. 3-A and 34-A I manufactured neo-salvarsan and neoarsphenamine.

Q. 61. Under what trade name did you sell it?

A. As neosalvarsan.

Q. 62. Under the other licenses which you have described, Nos. 4 and 35, what did you do?

A. I manufactured and sold novocaine and added the generic name of frocaine, which was prescribed by the Public Health Service.

Q. 53. Where did you manufacture these products which you have mentioned under these licenses?

A. In the plant and the laboratories of H. A. Metz Laboratories, Inc., in Brooklyn, 644 Pacific Street.

Q. 64. Can you state of your knowledge the amounts of royalties paid by you to the Alien Property Custodian under the licenses of the Federal Trade Commission by years?

A. Yes, sir.

Q. 65. Will you state it?

A. I have to refer to memoranda.

Q. 66. If you made the memoranda, yes; it is all right.

A. I saw it made and made it myself to some extent.

Q. 67. By year?

A. The salvarsan and neosalvarsan were grouped. orandum, but I have the receipts of the Custodian.

Q. 68. How much? State the years, beginning with the earliest year and on down.

A. Under licenses 34 and 34-A in 1919 we paid the Alien Property Custodian, on those licenses, $34,-711.16.

The payments, the amounts, are grouped in this mem-

Q. 69. You say the year 1919; for what period of that year?

A. The year 1919, the full period.

Q. 70. That is for the full period of the year 1919. Proceed.

A. In 1920 we paid $51,485.79; in 1921, $37,145.56; in 1922 $16,512.67.

MR. KRESEL: I did not get that last figure.

THE WITNESS: In 1922,, $16,000; it only ran up to July 1, 1922.

MR. KRESEL: How much?

THE WITNESS: $16,512.67.

Q. 71. That was up to July 1, 1922?

A. Including July 1, 1922. Up to July 2nd, practically. July 1st was included as a separate day. I know in novocaine we paid in 1919 $4,863.74, in 1920, $4,750.14, in 1921, $5,025.37, and in 1922, $2,800.29, being five per cent of the gross sales.

Q. 72. That last was up to the 2nd of July?

A. July 2nd, the same way. Making a total of royalties—if you want that.

Q. 73. Yes.

A. Of $139,855.18 on the salvarsan and neosalvarsan and $17,259.54 on the novocaine.

Q. 74. Mr. Metz, do you know of your own knowl-

edge whether there were any other concerns licensed by the Federal Trade Commission?

A. Yes, sir.

Q. 75. To use these same patents and trade-marks?

A. Yes, sir.

Q. 76. Could you state how many and what they were?

A. There were three licenses for salvarsan and neosalvarsan and, I think, four, including myself, for novocaine.

MR. KRESEL: Will you fix the time of that, please?

THE WITNESS: I do not know. The records will show that.

Q. 77. You do not know the date?

A. No.

MR. ANDERSON: I will state to counsel that the original licenses showing that patent issue and date are in the record. I only want to connect them up. They are all in the evidence.

Q. 78. Mr. Metz, are you personally familiar and can you speak of your own knowledge of the amounts of your receipts, your gross receipts and net profits from the sale of salvarsan, neosalvarsan and novocaine prior to the issuance to you of Federal Trade Commission licenses—that is, on your importations?

A. I can get it by referring to my notes, taken from my accountant's records handed to me, and which I saw made up.

Q. 79. Those notes were made up under your direction and for your use?

A. Yes. I supervised them.

MR. KRESEL: Is the question that he should tell you the figures now?

MR. ANDERSON: If he knows. He has said yes, of his own knowledge.

MR. KRESEL: I am assuming that he knows it. Do you now ask him for the figures?

Q. 80. Will you now please state the amount of your gross receipts and the amount of your net profits from the sale of salvarsan, neosalvarsan and novocaine, respectively, during the years in which you imported them, prior to your license by the Federal Trade Commission?

MR. KRESEL: To that we object, if your Honor please, upon the ground it is immaterial and irrelevant, not binding upon the defendant, and can in no way have any bearing upon the value of the patent. I assume that this evidence is being offered as some evidence of value.

MR. ANDERSON: You are quite right.

MR. KRESEL: Any figures that Mr. Metz may present with reference to his business prior to the war, which was business of his own and private, and not known to anybody else, the Alien Property Custodian or the Government or The Chemical Foundation, which was not in existence at that time, is immaterial and irrelevant.

THE WITNESS: It was known to the Alien Property Custodian.

THE COURT: Just a moment, Mr. Metz.

THE WITNESS: It is in the books.

MR. ANDERSON: My idea was, if your Honor please—and I think it is sound—that in considering the very intangible thing whch we call value any facts showing the earnings on a property of this kind under a patent, at any period during the use of the patent, would be relevant evidence. Its value might be to some extent affected by the circumstances, intervening conditions and various other things; but it is one of the facts to be considered in arriving at the inquiry here—which is not a queston of establishing an actual value,

but a question of establishing whether the price paid in this case had any relation to value.

Now, in that particular case, I think this evidence might be considered. I recognize that there are certain limitations that may be argued with reference to it and certain matters which may go to its weight, as to which I do not wish to discuss, but I think the evidence is relevant and material on this question, on which the Courts allow very great latitude on account of the various elements entering into it.

THE COURT: Colonel Anderson, I gather that the information that you are now trying to obtain from this witness is as to any source of information from which the purchaser or seller of these patents in the year 1919—

MR. ANDERSON: I think I know what your Honor's inquiry is. Of course, I would not suggest it, but I think it is a very natural one.

The Alien Property Custodian, I take it, in view of the facts disclosed in this case, would have had opportunity to gather that information without difficulty if he wanted to.

THE WITNESS: He had it, Colonel.

MR. ANDERSON: Beg your pardon.

THE COURT: Do not answer again until you are interrogated. Do not forget that.

THE WITNESS: All right, sir.

MR. ANDERSON: The situation is this: I take it, if your Honor please, that the question of value is a question largely of fact. Now, the fact that the purchaser may not have had information as to value might affect what he was willing to bid, but would not affect the value. It is a duty of the person occupying the position of a Trustee—

THE COURT: I understand your theory. It is only an answer to the direct question that I wanted.

MR. ANDERSON: I do not know further than this: That I think under the law this information will be clearly available to the Alien Property Custodian.

THE COURT: I will express no final view as to either the admissibility or inadmissibility or weight of the testimony, but will reserve that until the ultimate finding.

MR. ANDERSON: I recognize the questions that may arise.

THE COURT: You may put it in under the general rule.

MR. ANDERSON: Now, will you read the question, please. (Q. 80 repeated as recorded).

MR. KRESEL: Before the witness answers the question, I suggest to the Court and counsel that it might be well to develop with the witness as to the basis upon which he was dealing with these products at that time.

MR. ANDERSON: I thought he testified to that.

MR. KRESEL: Whether he was agent or principal in the transaction, so that we might be able to judge the value of that.

MR. ANDERSON: I am quite willing.

Q. 81. Mr. Metz, I understood you to say that you imported salvarsan, neo-salvarsan and novocaine for certain years which you stated prior to the war and into the early period of the war, from abroad; is that true?

A. Yes, sir.

Q. 82. Now, I will ask you to state, taking up first salvarsan, what were your gross receipts and net profits by years, if you can state it, from the sale of salvarsan which you imported during the period that you have described?

A. I can not give you salvarsan separately. I have

them both together, both salvarsan and neo-salvarsan.

Q. 83. All right. Give them both together.

A. They went together always on our books. I have the figures from 1913 to 1917. The Farbwerke-Hoechst Company, at that time the agents and manufacturers of the product made in Germany.

MR. KRESEL: I ask that the statement that the Company was the agent be stricken out as the conclusion of this witness.

MR. ANDERSON: I have no objection, sir. We will stop discussion on that.

THE COURT: So ordered.

Q. 84. Now, this Farbwerke-Hoechst Company, was the same Company which is described in the original licenses issued by the Federal Trade Commission?

A. Yes, sir.

Q. 85-86. It was an American corporation, was it not?

A. Yes, sir.

Q. 87. And you were the head of that corporation?

A. And owned all the stock, yes, sir.

Q. 88. It was practically your corporation?

A. Yes, sir, and is still.

Q. 89. State then, by years, what you made through importations by that corporation, that is, your receipts and net profits on salvarsan and neo-salvarsan, for the period of importation?

MR. KRESEL: I understand that he is about to give gross receipts and net profits; is that it?

MR. ANDERSON: That is what I have asked for.

A. The sales in 1913 of salvarsan and neo-salvarsan were $383,818.74.

MR. KRESEL: May I interrupt you a moment? Do you understand that those are the gross receipts that you are talking about. When you say sales, you mean gross receipts received from sales?

THE WITNESS: Gross sales, the amount received from sales.

MR. KRESEL: All right.

Q. 90. Your gross receipts from the sales of salvarsan and neo-salvarsan imported by you and sold in the United States during that period?

A. 1913.

Q. 91. 1913, amounted to how much?

A. $383,818.74.

Q. 91-a. What were your net profits during that year from those sales?

A. The net profits that year were $153,124.32.

Q. 92. Now, take the next year and give the same information of gross receipts and net profits?

A. In 1914, $502,986.77; net income $244,279.35.

Q. 93. Would you mind calling those figures over again?

A. $502,986.77; net income, $244,279.35.

Q. 94. That was for the year 1914?

A. 1914.

Q. 95. Now, take the year 1915?

A. 1915, $601,151.94.

Q. 96. What were your—

A. Sales?

Q. 97. Gross sales or receipts?

A. Receipts from sales?

Q. 98. From sales of this imported product which you have described?

A. Yes, sir; and the net income was $361,470.40. 1916, $969,176.41; net income $434,723.08.

Q. 99. And your importations were discontinued in 1916, as I understand it?

A. The end of 1916. We got the last shipment, November 1916, on permits.

Q. 100. Now, Mr. Metz, in order to follow that subject through, I will ask you to go on with salvarsan and neo-salvarsan and state your—you have al-

ready stated your sales and net profits under the license?

A. You have not got 1917 yet. I want to give you 1917, Colonel.

Q. 101. All right, 1917.

A. In 1917, we sold the stock we had on hand and some of the manufactured stuff.

MR. KRESEL: One minute, please. That has not been asked. All you have been asked for are figures. Please give that.

A. (Continuing) The figures are $628,753.80. The net income was $289,742.86.

Q. 102. Did you import any of this material, salvarsan or neosalvarsan in the year 1917?

A. No, sir. That was the stock that we had from 1916 and what we made here at that time.

MR. KRESEL: I ask that everything but "No, sir" be stricken out.

THE COURT: Motion granted.

Q. 103. Did you have any stock on hand at the end of your importations in 1916?

A. Yes, sir.

Q. 104. Did you sell that stock during 1917?

A. Yes, sir.

Q. 105. Now take novocaine by years and in the same manner, give the same information?

A. I ought to have qualified, Colonel, that some of these sales included product bought in the United States, made in Philadelphia, which we handled when the importations were scarce.

Q. 106. You mean 1917 sales?

A. I mean in 1917, yes; 1916 and 1917; some that we manufactured in 1916 and 1917.

Q. 107. The figures you have given represent the gross receipts and net profits of your business.

A. On those products.

Q. 108. Explained in the manner just indicated

between importations in the United States in the later period?

A. On those two products.

Q. 109. Now, take novocaine and give the same information for the same periods, if you can do so?

A. Novocaine was very small. Here they are. The novocaine sales began in 1906.

Q. 110. Give such information as you can give, giving the gross receipts and net profits in each year for the period.

MR. KRESEL: Do I understand that he is about to give the figures with reference to novocaine imported?

Q. 110. (continuing) I asked you about novocaine imported.

A. That was all imported at that time. I have not the figures in dollars, but I have the amounts. I can not give you the figures in dollars. I have not got them. I have simply got the amounts, because those books—

MR. KRESEL: That is an answer; you have not got the figures.

A. (continued) Not the dollars. I can give you totals and the amounts and quantity for each year.

Q. 111. Give us the totals and quantity, and then I will ask another question.

A. I will give you the quantities in detail.

Q. 112. All right, give us the quantities.

A. In 1906, the first year, we sold in five-gram bottles 210 bottles of five grams each, that is, 17 ounces. In 1907 we sold 128 five-gram bottles, in 59 ounces and 14 pounds, single pound packages. In 1908, 370 five-gram bottles, and 84 ounces and 47 pounds. In 1909, 760 five-gram packages, 234 ounces and 51 pounds. In 1910, 1133 five-gram bottles, 368 ounces and 67 pounds. In 1911, 1503 five-gram bottles, 552 ounces and 48 pounds. In 1912, 2580 five-gram bottles, 867 ounces

and 74 pounds. In 1913, 5746 five-gram bottles, 1798 ounces and 144 pounds. In 1914, 8562 five-grams, 3275 ounces and 242 pounds. 1915 and 1916 I have not got, except the importation in 1915 was 675 pounds—in 1916. That was after the war, we had trouble getting it.

MR. KRESEL: I do not want to interrupt Colonel Anderson's examination of this witness any more than I have to. It is understood, as I gather, that this testimony which refers to the period prior to April 10, 1919, is taken subject to our objection that it is immaterial, irrelevant, and not binding upon this defendant.

THE COURT: That is correct, Mr. Kresel.

Q. 113. Mr. Metz, what is salvarsan generally used for?

A. It is used almost entirely in the treatment of syphilis.

Q. 114. Neosalvarsan the same?

A. The same.

Q. 115. What is the general use of novocaine?

A. Novocaine is a local anaesthetic used largely by dentists and physicians in surgical operations.

Q. 116. After the beginning of the great war in 1914 were salvarsan and neosalvarsan manufactured in the United Etates?

A. In 1916, I think it was, a concern in Philadelphia started putting out a product that answered the requirements, and which I sold for them—or rather, I obtained it from them and sold it to the trade under an agreement with them.

MR. KRESEL: May that be stricken out, your Honor. It is volunteered and it is not responsive to the question.

MR. ANDERSON: No objection, sir.

THE COURT: Let the entire answer be stricken out from the record.

MR. ANDERSON: Read the question, please.

(Q. 116 repeated by the stenographer as above recorded.)

A. Yes.

Q. 117. Can you state approximately to what extent?

A. Enough to supply the demand; practically enough to supply the demand.

Q. 118. You stated in your answer to a former question that in 1917 you sold some of this product which you bought from a manufacturer in the United States at Philadelphia. Did you handle any of the United States product?

A. Yes, sir.

Q. 119. Could you state approximately how much of the stuff manufactured in the United States you sold?

A. Oh, several hundred thousand ampules, at least.

By MR. KRESEL:

Q. 120. When was this? In 1917?

A. This was—I will give you the exact date under the agreement under which I handled it, in just a moment.

By MR. ANDERSON:

Q. 121. If you can state approximately, I would rather you would state—

A. I just want to get the date, Colonel. This was in December, 1916, or last part of 1916.

Q. 122. And you sold this product during 1917 of the American manufacture?

A. Until I began to make my own, yes, sir.

MR. KRESEL: May the latter part of the answer be stricken out?

THE COURT: Let the answer be stricken out and the question repeated.

(Q. 122 repeated by the stenographer as above recorded.)

A. Yes.

Q. 123. Did you manufacture any of this stuff prior to the time of the licenses that you received here?

A. Yes.

Q. 123-A. During the year 1917?

A. Yes.

MR. KRESEL: May I suggest that you inquire which of the products he so manufactured?

Q. 124. I will ask, in reply to that question of counsel.

A. Salvarsan and novocaine.

Q. 125. How did you import salvarsan during the years 1915 and 1916, with the blockade existing?

A. The blockade went into effect April 1, 1915. Prior to that time it came in regular shipments. After that I had to get permits from the British Government through the State Department to allow me to pass the blockade.

Q. 126. When you got those products in the United States, what did you do with them?

A. Sold them to the—

MR. KRESEL: One minute, please. I have no objection—he sold them.

A. (continued) Sold them in the regular course of business to the Government; sold to the Government, to hospitals and to physicians.

Q. 127. I believe you said that the sale of salvarsan and neosalvarsan in this country began about 1911 to 1912. Did I understand you correctly?

A. Yes, sir.

Q. 128. Mr. Metz, since the beginning of the sale of this product of salvarsan and neosalvarsan, and novocaine, too, have you been familiar with the market conditions and prices of these goods in the American market?

A. Yes, sir.

Q. 129. Does your business in the handling of these three articles which you have described, first, as importer, and second, as licensee and manufacturer, extend throughout the United States, or is it local?

A. I beg your pardon?

Q. 130. Does it extend throughout the United States, or is it local?

A. The sale?

Q. 131. Yes.

A. Throughout the United States and export—I exported to Germany within the last month or two 150,000 ampules.

MR. KRESEL: I ask that that part be stricken out.

THE COURT: Let the entire answer be stricken out and the question repeated.

(Q. 129 repeated by stenographer as above recorded.)

A. Throughout the United States.

Q. 132. Do you export any of the three articles named, since you became a manufacturer under license?

A. I have exported neosalvarsan to various countries.

Q. 133. Neosalvarsan?

A. Yes, sir.

Q. 134. You have not exported salvarsan or novocain?

A. Not recently. I have exported it, but not recently.

Q. 135. Approximately what quantity of salvarsan and neosalvarsan has your corporation sold under the licenses issued by the Federal Trade Commission, by years if you can state it?

A. Well, I can give the amounts to you, but the dollars and cents I gave you.

Q. 136. I meant the amounts.

A. I should say approximately a million ampules a year.

Q. 137. Do you mean salvarsan and neosalvarsan?

A. Yes, combined; both of them combined.

Q. 138. Can you say approximately how much of novocaine you sold?

A. I have not those figures exactly on novocaine. I have the amounts, but not the pounds.

Q. 139. The amounts, I mean, as licensee of the Federal Trade Commission.

A. From 1919 on I can give you the amounts on novocaine.

Q. 140. All right.

A. In 1919 the sales were $246,295.67, in 1920 $292,739.47, in 1921 $294,304.46, and in 1922 $302,-283.40. Those were the gross sales.

Q. 141. But you cannot tell the exact amount sold, I mean, by quantity?

A. I have got them in the records, of course.

Q. 142. The quantities?

A. I have not them here.

Q. 143. If you cannot tell we will pass on.

A. I can get them for you. I have not my hands on that now.

Q. 144. I understood you to say that during the period that you have been licensed there were three other licensees for these same products?

A. On novocaine, yes.

Q. 145. And salvarsan and neosalvarsan?

A. There were three by the Federal Trade Commission and some afterwards by The Chemical Foundation.

Q. 146. Do you know what your profits were from the sale of salvarsan and neosalvarsan and novocaine during the period of the licenses by the Federal Trade Commission that you have described?

A. I have given you the salvarsan and neosalvarsan; I can give you the novocaine also.

Q. 147. You do know those amounts?

A. Yes.

Q. 148. I will ask you this question: Basing your knowledge upon your experience as an importer and as a merchant in this business and other knowledge which you have described, and your manufacturing experience, your knowledge of the profits of this business, including the profits of sale and manufacture, and from your familiarity with market conditions which you have described up to April 10, 1919, what in your opinion was the fair market value of Patent No. 986,148, which you have described as covering salvarsan, and reissue Patent No. 13,848, which you have described as covering neosalvarsan, on April 10, 1919?

MR. KRESEL: Before the witness is permitted to answer the question, we object to the question upon the ground that the witness has not been qualified as an expert on the value of patents or of these particular patents; that no sufficient foundation for such a question as is now propounded to the witness has been laid; that there is no evidence that this witness has given or intimated which would lay a proper basis for any estimate of value of these patents to be given by hm. We object to it upon the ground that it is immaterial and irrelevant. We object to it upon the ground that we originally urged that this evidence is an attempt to get the Court to substitute its judgment for that of the action of the Executive in a discretionary matter that was given to the Executive by Congress. Upon all those grounds, we object to the question.

THE COURT: The answer may be received subject to the objections, under our general rule.

A. Repeat the question, please.

(Q. 148 repeated as recorded above.)

A. It is hard to tell the value. I should have been very glad to pay a million dollars for the patents as they stood then.

MR. KRESEL: I ask that the answer be stricken out.

Q. 149. The question calls for your opinion of the fair value at that time.

MR. KRESEL: I suggest that the witness be first asked whether he can give an opinion.

Q. 150. Very good. I will ask you if you feel that you can give an opinion as to the fair value of those patents I have described at that time?

A. Yes, based on my knowledge of the profits of the business.

MR. KRESEL: I ask that everything but the word "yes" be stricken out.

MR. ANDERSON: All right, I do not object, sir.

Q. 151. Since you have said that you can give an opinion and have testified as to your experience, you need not review that, but I only want to ask you what in your opinion would have been the fair value of these two patents on April 10, 1919, under the conditions you have outlined in your testimony?

MR. KRESEL: I object to the testimony if it calls for what would have been the fair value. The question should be, what was the fair value.

THE COURT: Your general objection is withdrawn to this question?

MR. KRESEL: Oh, no, your Honor. I urge all my objections, but I simply urge that to the form of the question.

Q. 152. Well, what was the fair value? I will correct my English.

A. At least a million dollars.

Q. 153. At least a million dollars?

A. Easily.

Q. 154. If these two patents had been put up for auction with the licenses outstanding which you have described, as shown here by the record, would you have bid as much as a million dollars for them?

MR. KRESEL: I object to the question upon the ground that it is hypothetical and upon the other grounds that we urged to the preceding question as to value.

THE COURT: I do not understand, Colonel Anderson, that this question can be disproved. You are really calling for the witness's present mental attitude with respect to a transaction four years ago. I do not see how that can possibly add anything to what you already have.

MR. ANDERSON: I should have said, "Would you then have bid." That would be a fact of a desire at that time and a willingness to pay. In asking that question, if your Honor please, I am proceeding on a line of examination which has been admitted in many cases where questions of property values of real estate in condemnation and things of that kind have arisen.

THE COURT: I will permit you to take the answer.

MR. ANDERSON: There may be a debatable question as to whether that adds anything to what has been said, but I would like to get it on the record.

Q. 155. If these two patents had been put up for sale at public auction, subject to the licenses which you have indicated, would you then have bid on the same and would you have been willing to bid?

MR. KRESEL: The same objections, your Honor, that I urged to the other questions.

A. I would have bid at least a million dollars and possibly more if I had the chance.

Q. 156. Now I will ask you with regard to novo-

caine, Patent No. 812,564. Basing your opinion upon the general facts outlined in the preceding questions, in which your opinion was asked, and not repeating it, and your knowledge upon this subject of market conditions, what in your opinion was the fair value of Patent No. 812,554 on April 10, 1919, if sold under the conditions outlined in your testimony, or subject to the conditions outlined in your testimony?

MR. KRESEL: I do not understand that, Colonel.

Q. 156. (Continuing) All right. If sold subject to the licenses which you have described.

MR. KRESEL: That is different. We object to the question upon the grounds that we urged to the preceding question as to the value of the salvarsan patent.

THE COURT: Same ruling.

A. At least $200,000.

Q. 157. If the novocaine patent No. 812,554 had been offered at public auction by the Alien Property Custodian subject to the licenses which you have indicated then existed, as issued by the Federal Trade Commission, would you have bid for the same; and if so, how much would you have bid as a minimum?

MR. KRESEL: Same objection, your Honor.

MR. ANDERSON: That is understood.

A. At least $200,000.

Q. 158. Have you or the corporations which you have mentioned, with which you are connected, or which you control, ever registered any trade-marks covering salvarsan, neosalvarsan or novocaine?

A. Yes, sir. I had the trade-mark registered; transferred and registered.

Q. 159. Have you certified copies of those trade-marks or copies of them in this courtroom?

A. They are here.

MR. ANDERSON: I now offer in evidence the

following documents to be read and identified by the following numbers:

A certified copy of an instrument, trade-mark No. 53,072, called "Novocaine," dated May 22, 1906, to be read as "Plaintiff's Exhibit 403." Do you want to see those, Mr. Kresel?

MR. KRESEL: I would like to see them. If you are going to offer them one by one, I want to register my objection to them. I understood you were going to offer them all together and I was waiting until you were through. May I see them, please? (Papers handed to counsel).

Colonel, my recollection of the question to the witness which brought forward these papers was whether he or his concerns had registered these. This paper that you hand me appears to have been registered in the name of a German concern.

MR. ANDERSON: But I am going to offer the assignment. I will follow that with the assignment in each case.

MR. KRESEL: You now offer this paper.

MR. ANDERSON: I offer that.

MR. KRESEL: We object to it upon the ground that it is immaterial and irrelevant.

THE COURT: You may put it of record under our general rule.

Received in evidence and marked "Plaintiff's Exhibit No. 403." (*See Exhibits, Vol. II, Page 741.*)

MR. KRESEL: What was the date of that, Colonel?

MR. ANDERSON: 8th day of January, 1915. Right under that same offer, Assignment from the German Farbwerke, whose name appears as the original Registrar of the Trade-mark, to Farbwerke-Hoechst Company, dated the 8th day of

January, 1915, and shown by the certificate of the Patent Office to have been recorded on February 26, 1917, in the record as therein stated, to be identified and read as "Plaintiff's Exhibit 403-A."

THE COURT: Admitted under our general rule, subject to the general and specific objections.

Received in evidence and marked "Plaintiff's Exhibit No. 403-A." (*See Exhibits, Vol. II, page 745.*)

MR. ANDERSON: Patent Office copy of Trade-mark 79,969, registered October 25th, 1910, called "Salvarsan," identified and read as "Plaintiff's Exhibit No. 404." (*See Exhibits, Vol. II, page 748.*)

THE COURT: Admitted under the same conditions as the preceding document.

Received in evidence and marked "Plaintiff's Exhibit No. 404." (*See Exhibits, Vol. II, page 748.*)

MR. ANDERSON: Instrument called "Assignment of Trade-mark, No. 79,969," dated the 5th day of March, 1914, recorded May 6th, 1914, as stated in the certificate of the Patent Office, to be identified and read as "Plaintiff's Exhibit No. 404-A."

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit 404-A." (*See Exhibits, Vol. II, page 750.*)

MR. ANDERSON: Trade-mark issued by the United States Patent Office, No. 88,862, registered October 29th, 1912, the name being "neosalvarsan," to be identified and read in evidence as "Plaintiff's Exhibit No. 405."

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 405." (*See Exhibits, Vol. II, page 755.*)

MR. ANDERSON: An instrument called "As-

signment of Trademark No. 88,862, dated October 25, 1912," which instrument of assignment is dated the 5th day of March, 1914, and recorded in the Patent Office May 6, 1914, as shown by certificate thereto annexed to be identified and read in evidence as "Plaintiff's Exhibit No. 405-A."

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 405-A." (*See Exhibits, Vol. II, page 757.*)

Q. 160. Colonel Metz, have you sold and distributed any products under the names indicated in the trade-marks which I have just introduced in evidence since the assignment to you on the dates named in said assignments?

A. Yes, sir.

Q. 161. Have those trade names or trade-marks and each of them been in constant use by you?

A. Yes, sir.

Q. 162. Could you state of your own knowledge what you have expended in advertising these three trade-marks and each of them in the United States since they were assigned to you?

MR. KRESEL: Can you separate them?

Q. 162. (Continued) Yes, can you separate them?

MR. KRESEL: I object to the question upon the ground that that is immaterial and irrelevant; that it is no basis for arriving at any value of the trade-marks; furthermore upon the ground that it has not been made to appear, and I do not understand that it is charged, that these trade-marks were either seized by the Custodian or conveyed to the Chemical Foundation; is it?

MR. ANDERSON: I think they are included; yes.

MR. KRESEL: Is it? I did not know that that was your charge.

MR. ANDERSON: That is in the list in Exhibit G.

MR. KRESEL: I did not understand that that was your charge. I withdraw the last ground, then, if that is the fact.

THE COURT: I am confused about that, Colonel Anderson. These assignments were made of the three products?

MR. ANDERSON: Yes, sir.

THE COURT: I mean assignments of the trademarks of each of the three products were made to some corporation in which Mr. Metz was interested.

MR. ANDERSON: Yes.

THE COURT: And they were made after the war began?

MR. ANDERSON: Before the war, that is before we went into the war.

THE COURT: After the conflict abroad began, but before we entered?

MR. ANDERSON: Yes, sir.

THE WITNESS: Prior to the conflict abroad.

MR. ANDERSON: One moment.

THE WITNESS: I beg pardon.

MR. ANDERSON: I understand that the assignments were made prior to the beginning of the war; at least the dates are stated on the face of the assignments.

THE COURT: Do these assignments appear to be absolute on their face?

MR. ANDERSON: Yes, sir. They are in evidence.

THE COURT: And you have shown by the exhibits attached to your Bill, which have been introduced in evidence, that these three trademarks were seized and sold by the Alien Property Custodian?

MR. ANDERSON: Yes, sir. The Bill in this case, if your Honor please, Exhibit G and the various schedules—just exactly which this is I do not recall, but that shows that these three trademarks were seized by the Alien Property Custodian and two days after seizure were transferred to the Chemical Foundation, that so far as the record of the Alien Property Custodian shows or we know, they were still held by or claimed by the Chemical Foundation. I am going to bring that out later. I wanted first to get this evidence in if it were appropriate, but I am perfectly willing to lay the foundation by bringing that out later.

THE COURT: I will take the answer.

MR. ANDERSON: The question was how much he had expended in advertising these trade-marks.

THE COURT: I thought it was the value. You may take that answer, but I think I have indicated before how I feel, as to what weight there may be to it. I will take the answer.

MR. ANDERSON: Yes, sir, I quite agree it is debatable.

Q. 163. That was for all these three trademarks together?

A. Approximately it was between $150,000 and $200,000 a year.

A. Practically, yes. I should say for the three. More than that probably, but at least that.

Q. 164. I will ask you to base your answer to the question I am now going to put on the general facts which I outlined in preceding questions when I asked your opinion as to the values of the patents, and say whether you can give an opinion as to the value of each of these three trademarks on April 10, 1919?

THE COURT: The answer to that is yes or no, whether you can.

A. I can; yes, sir.

Q. 165. Will you state in your opinion, basing it on the evidence you have given of your knowledge, etc., what was the fair value at that time of the two trade-marks salvarsan and neosolvarsan, which I understood you to say were used together; or, if you can give them separately, all right.

MR. KRESEL: The same objection, your Honor.

THE COURT: I understand that the objection goes to all this testimony.

MR. ANDERSON: Yes.

A. Well, do you mean for some one to acquire them or what they are worth to me?

Q. 166. I mean what would be the fair value if they were put up at auction and sold?

A. Oh, a million dollars easily.

Q. 167. Do you mean for both of them or one?

A. I mean for the two.

Q. 168. The two together?

A. The two together.

Q. 169. Could you separate their value, approximately.

A. Yes, I should say 75 per cent. and 25 per cent.

Q. 170. For what?

A. 75 for the neosalvarsan and 25 for the salvarsan. That is based on the proportion of sales, of course.

Q. 171. Then approximately you would put the fair value of the trade-mark neosalvarsan on April 10, 1919, at not less than $750,000?

A. Easily.

Q. 172. And of salvarsan at not less than $250,000?

A. Yes.

Q. 173. Take novocaine, and say what in your opinion was the fair value of that trade-mark in April 1919, if it had been put up and sold to the trade?

A. At least $250,000.

Q. 174. Was any demand ever made upon you by the Alien Property Custodian for the three trademarks salvarsan, neosalvarsan and novocaine, which you have described, either or any of them?

MR. KRESEL: Objected to as immaterial and irrelevant.

MR. ANDERSON: This goes to the inquiry as to seizure and sale.

MR. KRESEL: But it does not make any difference. If he had a right to seize he did not have to ask his permission.

MR. ANDERSON: I asked if any demand was ever served on him.

A. I think so, along with all other trademarks. The Companies had been seized in whose name they stood.

MR. KRESEL: I ask that everything except "I think so" be stricken out.

THE COURT: Let the whole answer be stricken out and the question repeated. The answer will be taken, Mr. Kresel, under the general rule.

MR. KRESEL: Yes, your Honor.

THE COURT: Read the question.

Q. 175. (Q. 174 repeated as recorded above).

A. I think there was.

Q. 176. Are you the Metz who was a party to the suit of Metz against Garvan, which I think was decided about June 2nd, 1922?

MR. KRESEL: One minute, please. I object to that on the ground that it is immaterial, and I would like to ask Colonel Anderson in what respect he considers that to be material.

MR. ANDERSON: I consider it material as showing the course of conduct of the Alien Property Custodian and the Chemical Foundation in dealing with these properties of this gentleman,

who was an American citizen, and his companies which were American companies. Also as going directly to the question of the seizure and sale of these particular properties, the value of which he has discussed.

MR. KRESEL: Colonel Anderson knows perfectly well that the suit he is now inquiring about had nothing to do with the Chemical Foundation and had absolutely nothing to do with the patents or trade-marks here in question. Knowing that, I think Colonel Anderson has not stated in answer to my inquiry what the real purpose of this question is.

MR. ANDERSON: Just hold on a minute and let us get ourselves straight on that proposition. Mr. Kresel may have omniscience, but he can not tell what I know and what I don't know. I do not know what the suit of Metz against Garvan referred to.

MR. KRESEL: You do not?

MR. ANDERSON: I do not, but I do know that there was such a suit and I wanted to identify him as the Metz therein referred to. That is all that I was going to ask about it.

THE COURT: Then I shall sustain the objection and not let you take the answer.

MR. ANDERSON: I want to make a further statement, if your Honor please.

THE COURT: Yes?

MR. ANDERSON: Mr. Kresel by the latter part of his statement implies that I have not been frank with the Court.

MR. KRESEL: No.

THE COURT: No, we are not going to discuss that.

MR. KRESEL: No, I did not mean that, and if you gathered that meaning I withdraw it.

MR. ANDERSON: I want to make that absolutely clear, that offer, because I want to be frank with the Court and counsel.

MR. KRESEL: I had no such intention.

THE COURT: We shall not now discuss it. I shall not assume any such implication resides in any remark of counsel on either side, particularly in view of the manner in which this case has been conducted during the last three weeks. So we will not have any discussion of that kind now.

MR. ANDERSON: That is all right, sir, I just wanted to make that clear.

THE COURT: The question is what?

MR. ANDERSON: I will withdraw the question in view of the statement of counsel that it refers to an entirely outside matter. I have not been able to look at the report; I did not have it. I know it refers to a suit.

THE COURT: Then you will put another question.

MR. ANDERSON: Yes.

Q. 177. Colonel Metz, are you a member of the American Dyes Institute?

A. My company was.

Q. 178. Which company?

A. The Consolidated Color & Chemical Company.

Q. 179. Any other company of yours?

A. I do not recall whether the Central was or not. I know the Consolidated was; and I attended meetings there, as President of that Company.

Q. 180. Are you or any of your corporations stockholders in the Chemical Foundation?

A. Yes, sir, three of them.

Q. 181. Which companies?

A. The Consolidated Color & Chemical Company, the Central Dyestuffs Chemical, and H. A. Metz Laboratories, Inc., subscribed for $50,000 of the stock

at the meeting at which subscriptions were taken for these companies.

Q. 182. Your companies still hold that stock, do they?

A. Yes, sir.

Q. 183. Now, I will ask you if you had any correspondence with the Alien Property Custodian or with the Chemical Foundation, or both, in relation to the seizure and sale of the three patents which have been here under discussion and the trade-marks which have been here under discussion, or any of them?

A. My counsel had with regard to the trade-marks.

Q. 184. Have you personally had any correspondence?

A. My counsel for me, as to their return.

Q. 185. Have you that correspondence in your possession?

A. Copies are here.

Mr. Anderson: I would like to look at it. (Handed to counsel).

Q. 186. The plaintiff here introduced in evidence yesterday, three bills of complaint, identified as Plaintiff's Exhibits Nos. 345, 346, and 347, being in each case suits in equity, filed in the United States District Court for the Southern District of New York, by the Chemical Foundation, Inc., against H. A. Metz Laboratories, Inc., a corporation, and Frank White, as Treasurer of the United States. Do you know whether the H. A. Metz Laboratories, Inc. is the company which you have described, of which you are the head and owner?

A. Yes, sir.

Q. 187. If so, state whether that is the case.

A. It is.

Q. 188. There also were introduced yesterday, bills of complaint in three suits which were instituted

in the Eastern District of New York by the Chemical Foundation, Inc., against H. A. Metz Laboratories, and Frank White, Treasurer of the United States, identified as Plaintiff's Exhibits Nos. 363, 364 and 365. Is the H. A. Metz Laboratories, Inc., the company to which you have referred, of which you are the head?

A. I assume so; one of them.

Q. 189. You know that those suits have been brought against you?

A. I have been so informed by my counsel, yes, sir. I was in Europe when they were first brought. I was so advised.

MR. ANDERSON: With the reservation stated, the witness may be cross-examined, sir.

MR. KRESEL: Just one minute.

THE COURT: Suppose we take the morning recess which we spoke of.

(After short recess.)

Q. 190. Colonel Metz, you are here testifying under subpoena issued by this court, are you not?

A. Yes, sir.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 191. Mr. Metz, I have noticed that throughout your testimony this morning you never once mentioned the fact that prior to the outbreak of the European War you were the representative of the German House of Hoechst. That is the fact, isn't it?

A. Not in that way. I was the agent for the sale of their goods; bought on my own account from them.

XQ. 192. I say, the fact that you were their agent or representative or had anything to do with them at all was not mentioned by you upon your direct examination?

A. It was not asked in the question.

XQ. 193. There is nothing in that relationship that you desire to disclose, is there?

A. On the contrary, I would be very glad of it.

XQ. 194. The fact is that for many years before the outbreak of the European War you had relationships with the Hoechst Company of Germany?

A. Yes, sir; for 30 years at least.

XQ. 195. And for many years before the outbreak of the European War you had the exclusive agency in the United States for the sale and disposition of products manufactured by the Hoechst Company?

A. Yes, sir.

XQ. 196. Such arrangements as there were between you and the Hoechst Company were in writing, weren't they?

A. Yes, sir.

XQ. 197. Have you those contracts with you?

A. I have, and they were all published in the hearings referred to by Mr. Anderson.

XQ. 198. Now, if you will just answer my questions, Colonel, we will get along very well.

A. I have them, Mr. Kresel.

XQ. 199. Please do not volunteer anything that is not asked.

MR. ANDERSON: If your Honor please, to save interruption as far as I can, I wish to state on the record now that I object to any evidence in the cross-examination outside of matters covered by the direct; and that counsel makes the witness his own if he does it. I am not objecting to this examination because I think it relates to the general subject.

THE COURT: It would be well for you to call my attention specifically to any questions that you think are not in cross-examination.

MR. ANDERSON: I will, sir.

THE COURT: Because it is not my purpose to let the cross-examination go beyond the proper bounds of cross-examination.

MR. ANDERSON: I will endeavor to do so, but I did not want to interrupt counsel.

XQ. 200. You say that you have your contracts with the Farbwerke Hoechst Company of Germany here. Will you please produce them?

A. They are in my bag there. I will have them in a moment, Mr. Kresel. Here are copies of them—and the originals, I think.

XQ. 201. The last contract between you and the Hoechst Company was dated in 1912, was it not?

A. The last was in 1913.

XQ. 202. Let me see that one first, please, if you will.

A. There was one in 1912 and one in 1913. I have the 1912 one here, but not the 1913. It is in the record. I can point it out to you in the record, where Mr. Garvan put it in. I have the other ones from 1902, 1905 and 1912.

XQ. 203. Let me have what you can produce.

A. The 1913 one is the last one. That is in the record.

MR. KRESEL: All I ask is that these be marked for identification.

THE COURT: Let them so be marked.

MR. KRESEL: The first one I ask be marked as an agreement dated the 12th day of November, 1902, between Farbwerke vorm. Meister Lucius & Bruening, Herman A. Metz and others.

Marked Defendant's Exhibit C for identification 6-23-23.

THE WITNESS: Those are prior to 1913, are they not, Mr. Kresel?

MR. KRESEL: The next one is an agreement dated August 4th, 1915, between the same parties.

Marked "Defendant's Exhibit D for Identification."

MR. KRESEL: The next is an agreement dated the 26th day of September, 1904, which is described as a Supplemental Agreement, made between the same parties.

Marked "Defendant's Exhibit E for Identification."

MR. KRESEL: The next is an agreement dated July 22nd, 1912, between the same parties.

Marked "Defendant's Exhibit F for Identification."

MR. ANDERSON: It is not your intention to introduce those at the present time?

MR. KRESEL: Not at the present time.

THE WITNESS: The 1913, may I put that one in? It is not fair to put in the others without the 1913 contract, which is the one on which the whole thing hinges.

MR. KRESEL: I would ask your Honor to instruct the witness that it is his duty to answer questions and not argue with me, or to suggest that anything that counsel does is either fair or unfair.

THE COURT: What was the statement made by the witness? Will you read that, please? (Record repeated).

Colonel Anderson, do you care to do what has been requested of the Court? I should be very glad to have it come from you rather than from me.

MR. ANDERSON: I will, if your Honor prefers. I think very often witnesses who are not familiar with Court proceedings do not realize that they

must confine themselves strictly to response to the question.

THE COURT: Colonel Anderson, I shall be very glad to have you inform this witness as to what a witness's functions are.

MR. ANDERSON: I will. Colonel, in answering Mr. Kresel's questions under cross-examination, the rules of evidence require that you should confine your answers to what is fairly responsive to the question, and not go beyond his question. If there are any matters that are not brought out by that answer, my duty is to bring them out, if they are material, on Re-direct.

THE WITNESS: Yes, sir.

MR. ANDERSON: And in the next place, I would suggest that you have the right to make a complete answer to the question; that is an answer, if "yes" or "no" would not be true, you have a right to make a sufficient answer to make your reply the truth and the whole truth, but, of course, not to argue with counsel or to go beyond a fair, truthful statement in reply to his question. I think that covers it.

THE COURT: With this modification, Colonel Anderson: That if a question is asked him which calls for a yes or no answer, he must first answer "yes" or "no," and then qualify it and not attempt to reason it out, without the yes or no answer.

MR. ANDERSON: I am glad your Honor made that suggestion. First answer "yes" or "no," and then explain or qualify as may be necessary, and only to the extent necessary to make your answer a truthful response to the question.

XQ. 204. Now, one of the products of the Farbwerke Company of Germany was salvarsan?

A. Yes, sir.

XQ. 205. At first there was only salvarsan and later they put out the product called Neo salvarsan?

A. Yes, sir.

XQ. 206. And subsequent thereto a third product called Silver Salvarsan?

A. Yes, sir.

XQ. 207. And up to the outbreak of the European War, you were the sole selling agent in the United States for those products?

A. Yes, sir.

XQ. 208. And except through you, no one in the United States could obtain those products?

A. They did.

XQ. 209. Except you, there was no one that sold those products for the Farbwerke Hoechst Company?

A. Not directly for them.

XQ. 210. You have stated in your direct examination that salvarsan is a drug, I think you said, was a specific for syphilis; indeed it is the most effective for that disease?

A. So held.

XQ. 211. And you were marketing that product and its subsequent development from the time when the formula for its production was first discovered, were you not?

A. From the time it first came on this market.

XQ. 212. And that, you say, was in 1911?

A. 1911 or 1912.

XQ. 213. Up to the time of the outbreak of the European War, was that product manufactured here in the United States?

A. No, sir.

XQ. 213-A. When was it first produced here in the United States by anybody, to your knowledge?

A. Early in 1916, I think. 1915, or early in 1916.

XQ. 214. Now, it is that product—salvarsan,

that is covered by one of the patents as to which you undertook to give an opinion as to value?

A. Salvarsan was the trade-mark name which I had.

XQ. 215. I did not ask you about the trade-mark. I am speaking now about the patent. Salvarsan, Neo Salvarsan and Silver Salvarsan were all covered by the patent as to which you undertook to give value this morning?

A. No, sir.

XQ. 216. Which one was?

A. Salvarsan and Neo Salvarsan. Silver came later, after the War, after the Armistice.

XQ. 217. You have sold Silver Salvarsan?

A. Under license from The Chemical Foundation.

XQ. 218. You have given us the figures of the amount of your sales, have you not?

A. Not of silver salvarsan, no, sir. Only salvarsan and neo salvarsan.

XQ. 219. You did not include your sales of silver salvarsan?

A. No. They are separate.

XQ. 220. Nor include your profits in silver salvarsan?

A. No, sir.

XQ. 221. So you have given us today no figures as to silver salvarsan?

A. No, sir.

XQ. 222. Now, salvarsan and neo salvarsan were covered by the patents as to which you undertook to give value this morning?

A. Yes, sir.

XQ. 223. And those patents were owned prior to the outbreak of the European war by whom?

A. Farbwerke Vorm. Meister Lucius & Bruening of Hochst-on-the-Main, Germany.

XQ. 224. And that was the concern whose exclusive agent you were in the United States?

A. Yes, sir.

XQ. 225. Besides pharmaceuticals, this Farbwerke German concern also manufactured dyestuffs?

A. Yes, sir.

XQ. 226. And prior to the outbreak of the European war, you were their exclusive selling agent in the United States for those products?

A. Yes, sir. My company was; one of my companies.

XQ. 227. And those products were covered by patents owned by the German concern, weren't they?

A. Some of them were patented; others were not.

XQ. 228. Were any of the products covered by patents owned by the Farbwerke Company of Germany manufactured in the United States prior to the outbreak of the European war?

A. Not to my knowledge.

XQ. 229. Your relationship to the Farbwerke Company of Germany was extremely close, wasn't it?

A. Yes, sir.

XQ. 230. Indeed, it is a relationship that has existed, as you say, for a period of thirty years?

A. Yes, sir.

XQ. 231. Practically all your business life has been in co-operation and in conjunction with the Germans, has it not?

A. The Germans, the English, French and Swiss manufacturers.

XQ. 232. Mostly with the Germans?

A. Mostly with the Germans; with this one particular German house.

XQ. 233. What years did you say you were in Congress?

A. I was elected in 1912; went there in 1913; 1913, 1914, 1915. March 4, 1915, I think my term expired.

XQ. 234. The question of duties on importations of dyestuffs and pharmaceuticals was one in which you were interested as representative of this German concern, were you not?

A. Yes, sir, as an importer and as a dealer here.

XQ. 235. In both capacities?

A. Yes, sir.

XQ. 236. And, of course, the Farbwerke-Hoechst Company of Germany was interested in what duties were imposed by our Government upon importations of their products?

A. Yes, sir.

MR. ANDERSON: If your Honor please, I wish to make my objection to this matter on the ground that it is not proper cross-examination, entirely outside of the direct, relating to matters not touched upon in direct. I object upon that ground.

MR. KRESEL: I say to your Honor that it is strictly cross-examination for the purpose of showing the interest and the bias of this witness, as I shall show by my further questions.

THE COURT: To show his interest in the transactions to which he has testified?

MR. KRESEL: Yes, your Honor; and affecting his credibility.

THE COURT: That objection, as not being proper cross-examination, will be overruled, if that is the purpose, because I think a very wide scope is given on cross-examination.

MR. ANDERSON: I recognize that, sir, but I thought counsel was going into the question of import duties.

THE COURT: I think this is within the proper bounds of cross-examination and I will overrule the objection.

XQ. 237. While you were in Congress, did you receive instructions from the Farbwerke Company in

Germany as to what you should do with reference to duties to be placed upon products that they were manufacturing and importing into the United States?

A. No, sir. Emphatically not. Suggestions, but not instructions.

XQ. 238. Oh, you got suggestions?

A. Suggestions. Any manufacturer makes suggestions, naturally.

XQ. 239. There were suggestions made to you, who were then a member of Congress, as to what you should do with reference to import duties on products manufactured by the Hoechst Company?

A. No, sir; not as to what I should do for a moment; what they would like to have done.

XQ. 240. What they would like to have done?

A. Possibly. They expressed their opinion. That is all. It did not affect me any.

XQ. 241. Now, I read to you the following letter.

MR. KRESEL: Colonel, I am reading from page 499 of the proceedings before the Committee on Finance in the United States Senate, from which you read this morning.

XQ. 241 (continuing). Did you receive the following letter from the Farbwerke Company in Germany:

"Hoechst A. Main, June 20, 1913.

"My dear Mr. Metz:

"I received your two letters of the 4th and 10th of this month.

"As regards hydrosulfit, I can only explain to you once more that we invoice exactly according to the lowest market prices here, that we naturally deduct packing and freight from the duty invoice." * * * *

"It is very interesting, that you now receive the samples of the competing factories on the part of the dyers for examination. I can nevertheless imagine that an uncomfortable situation may some time arise for you because of it."

I will return to that paragraph in a minute. This is the paragraph that I have reference to:

> "We are naturally not interested that hydro-blue or carbazol colors should be placed on the free list; would not, however, on our part come forth directly against Cassella; you will therefore on your part omit any direct work against Cassella. I also repeat, as I have already informed you in my communication of June 9, my opinion, that the best for all of us would be, if certain dyestuffs, including the alizarin dyes, would pay about 15 per cent duty, and only indigo remains on the free list. I should consider it a great success were you successful in leading up to such a change in the tariff."

Did you receive that letter?

A. Yes, sir, I did.

XQ. 242. This letter is dated June 20th, 1913?

A. Yes, sir.

XQ. 243. At that time you were a member of Congress?

A. Yes, sir.

XQ. 244. Now I want to call your attention to another letter and ask you whether you received that one, from the Farbwerke Company in Germany. This one is dated May 14th, 1913. I am not going to read the whole letter, I am going to read only that portion of it which refers to the question I have directed to you.

MR. ANDERSON: What is the page?

MR. KRESEL: Page 500.

MR. ANDERSON: Of what volume?

MR. KRESEL: Of the same publication.

XQ. 244 (continuing). "The Badische"—that refers to the Badische Aniline Company, does it not?

A. Yes, competitors of the concern I represented.

MR. KRESEL: I ask that the latter part be stricken out.

THE COURT: It is stricken out.

XQ. 244 (continuing).

"I can readily imagine that you are unusually busy in Washington now. The Congressional Record, which you were kind enough to send me, I will read with much interest. From it one can best picture the situation.

"The Badische is naturally not much pleased that alizarin has to pay a duty of 10 per cent, whereas the indanthrene and the remaining anthracene derivative must pay full duty. We trust, however, that you will be able to push through alizarins without any duty and have the duty on dyestuffs reduced. It would at any rate be very nice, though I can not really believe it possible, after we were so badly cut up by the revision of the tariff. I beg of you to forecast exactly the best results obtainable in delivering to your f. o. b. European ports."

Did you receive that letter?

A. I assume so. It is in the record.

XQ. 245. And at that time you were a member of Congress?

A. Yes, sir.

XQ. 246. Pursuant to the suggestions you say you got from these letters you did as a member of Congress undertake to put indigo on the free list, did you not?

A. Not pursuant to the suggestion in those letters; no, sir.

XQ. 247. I did not ask you that.

A. No, sir; I did not. That is the answer, then.

XQ. 248. Did you try as a member of Congress to have indigo placed on the free list?

A. Yes, sir.

XQ. 249. And you succeeded?

A. Yes, sir.

XQ. 250. Did you tell on the floor of the House

of Congress that you were representing a German concern that was writing to you and making suggestions to you as to what you should do?

A. I don't know whether I did or not. There was no occasion for discussing it.

XQ. 251. Before we entered the war, Mr. Metz, you were violently pro-German, were you not?

A. No, sir; at no stage was I pro-German.

XQ. 252. That is an answer.

MR. ANDERSON: I do not think that is a fair question, if your Honor please.

THE COURT: Absolutely no.

MR. ANDERSON: What is pro-German is absolutely a question of——

MR. KRESEL: I am going to follow it up, Colonel. The question is answered.

THE COURT: I take it, Colonel Anderson, that the attitude of a witness with respect to such matters is a fact that might be considered and would be proper to be considered in weighing the testimony of a witness, might it not?

MR. ANDERSON: I do not think, sir, that I could be questioned as to whether I was pro-German or pro-English. I could be questioned as to what I did and said, and from what I did and said——

THE COURT: I agree with you.

MR. KRESEL: I am coming to that. I am coming to the specific portions. Just give me a chance.

THE COURT: I think you are right on that, Colonel Anderson.

MR. ANDERSON: I move to strike out that question as an offensive question, and I think it ought to be stricken out.

MR. KRESEL: Oh, Mr. Metz does not consider it an offensive question.

THE WITNESS: I have heard it so often I do not like it, Mr. Kresel.

THE COURT: What is your application, Colonel Anderson?

MR. ANDERSON: My application is to strike out that question and any answer thereto, because I do not think it is a fair question in the first place; in the next place, it is asking the witness for an opinion on a matter. Counsel has a perfect right to examine him on anything he did or said and your Honor can draw the conclusion.

MR. KRESEL: I have a right, your Honor, to ask him on cross-examination any question that goes to his credibility and his interest, and I offer this testimony on that ground and for that purpose.

MR. ANDERSON: I concede that there can be broad examination going to credibility, but there is a limit even to evidence going to credibility, and that is admissible evidence of facts. The witness expressed the opinion and his answer is that he was not pro-German. Upon the facts your Honor might reach a different conclusion. The fact whether he was pro-German or pro-something else before the War, might be for you. In the second place, the matter is of no materiality here, and can not be, for the reason that the term has since the War acquired a significance which in friendliness between nations before the War it did not have, and therefore the use of that expression in the period before the War conveys an impression upon the record which was not and could not have been the fact prior to the War. Therefore, the witness can be asked as to what he did and what he said and your Honor can then draw your conclusion as to his attitude toward any question affecting this case.

THE COURT: The question has been answered, and I am not making any ruling. I will let the answer stand under the general rule with such exception as you desire.

MR. ANDERSON: Will your Honor permit me an exception to that ruling.

XQ. 253. In addition to being the exclusive selling agent of this German concern you had other interests here of a German character before the War, did you not?

A. I had some stock in the wireless—Sayville Wireless Company. I was President of that corporation; that was all.

XQ. 254. That is, you were President of the Atlantic Communication Company?

A. A short time, yes.

XQ. 255. Which was controlled by the Allgemeine Electricitats Gesellschaft of Berlin?

A. Yes, sir, the Telefunken Company.

XQ. 256. You were also part owner of the Evening Mail, were you not?

A. No, sir, I loaned some money——

XQ. 257. Did you have any interest in the Evening Mail?

A. Not until long after we were in the war.

XQ. 258. You knew Mr. Rumley, did you not?

A. Certainly.

XQ. 259. Didn't you own stock in the Evening Mail before we entered the war?

A. I do not think I did. I had some stock as collateral on some money I loaned Mr. Rumley.

XQ. 260. And that money was loaned by you to enable Mr. Rumley to buy the Evening Mail, was it not?

A. I so understood at the time, yes.

XQ. 261. And you did it at the request of Count von Bernstorff, the German Ambassador, did you not?

A. No, sir. I beg your pardon, I did not. It was after von Bernstorff went home, that I loaned him the money.

XQ. 262. I read to you from a letter that you wrote to J. A. Lyons, Esq., Room 746, Custom House, New York City. Do you remember writing to him?

A. Yes, sir.

XQ. 263. He was a Government agent that was investigating your connection with the Evening Mail, was he not?

A. I told him all I knew of it, yes, sir.

XQ. 264. I read the following passage:

> "My first acquaintance with Rumley came about through a telephone message from Count Bernstorff some time early in 1915 on my return from Europe."

That was true, was it not?

A. Yes, sir.

XQ. 265. So your first connection with Rumley was through Count von Bernstorff?

A. It was no connection. It was acquaintance.

XQ. 266. What?

A. Just an acquaintance with him; no connection.

XQ. 267. An acquaintance. And then you made this loan, as you call it?

A. Not until a long time afterwards.

XQ. 268. When did you make the loan?

A. I do not recall. Some time in 1917, I guess after the war started, I think I loaned Rumley some money.

XQ. 269. How much did you lend him?

A. I can not recall the figures. They are probably in there. I think it was—I do not remember. They were different amounts.

XQ. 270. What did you get for that loan?

A. I got his note and stock as collateral.

XQ. 271. Didn't you get a portion of the stock outright?

A. I do not think so. If I did, I did not want it. I do not remember the details.

XQ. 272. You do not remember that?

A. No, sir; simply a collateral proposition.

XQ. 273. I read again from this letter to Mr. Lyons: "According to my check book I gave Dr. Rumley a check on May 12, 1917, for $10,000, for which he gave me as collateral 250 shares of S. S. McClure newspaper stock, one-half of which was to belong to me and the other half he was to have the privilege of buying back."

A. I guess that is right.

XQ. 274. That refreshes your recollection?

A. Yes, after the war started.

XQ. 275. Besides your interest in the Atlantic Communication Company, and part owner of the Evening Mail, what other German interests did you have here?

A. None that I recall.

XQ. 276. Now, just think.

MR. ANDERSON: One moment. I object, if your Honor please. The witness has not stated that he was a part owner of the Evening Mail. He expressly said he was not a part owner of the Evening Mail.

MR. KRESEL: I will amend that, your Honor.

MR. ANDERSON: And if he is going to quote his testimony, I will ask him to quote it correctly.

MR. KRESEL: All right, I will correct that.

XQ. 276. Such interest as you had at all was——

A. Collateral interest.

XQ. 277. You did not misunderstand me?

A. I did.

XQ. 278. Oh, you did misunderstand me?

A. I knew what you were getting at.

XQ. 279. I am sorry.

A. I did not misunderstand you.

XQ. 280. You were part owner of the Atlantic Communication Company, were you not?

A. I had $10,000 worth of stock that I bought in that company.

XQ. 281. Well, you had connection with the Republic Trading Corporation, did you not?

A. That was a corporation——

XQ. 282. Didn't you, yes or no?

A. Yes.

XQ. 283. You were vice-president of that?

A. I do not recall that.

XQ. 284. You had some office?

A. Probably; they were all dyestuff people.

XQ. 285. And that corporation was organized to import German goods after the outbreak of the European War?

A. Yes, sir, German dyes.

XQ. 286. You were quite an intimate of Count von Bernstorff?

A. I don't think I was intimate.

XQ. 287. Well, you breakfasted with him?

A. So did others.

XQ. 288. Well, you breakfasted with him?

A. Certainly, I had a perfect right.

XQ. 289. That is all I wanted to know. You knew Dr. Albert, did you not?

A. Yes, naturally.

XQ. 290. Dr. Albert was a privy-counsellor of the German Empire?

A. I understood so.

XQ. 291. And you know that he was over here in the United States prior to our going into the war——

A. Handling commercial affairs.

XQ. 292. ——for two or three years?

A. Handling commercial affairs.

XQ. 293. You were very intimate with him?

A. Not intimate, no. I knew him and did business with him; had to.

XQ. 294. Conferred with him?

A. Had to, to get goods.

XQ. 295. You went abroad early in 1915, do you remember?

A. I went abroad late in 1914, at the request of the State Department.

MR. KRESEL: I ask that the latter part be stricken out.

THE COURT: Let the whole answer be stricken out and the question repeated.

XQ. 296. You went abroad the latter part of 1914 or the early part of 1915?

A. The latter part of 1914, and came back the same year, Christmas Day.

XQ. 297. And when you went abroad you carried a letter of introduction from Dr. Albert to the German officials?

A. Yes, sir.

XQ. 298. You went into Germany, did you not?

A. Yes, sir.

XQ. 299. I want to know whether this is the letter of introduction that you got from Dr. Albert? It is dated November 16, 1914.

MR. ANDERSON: Will you state what you are reading from, Mr. Kresel?

MR. KRESEL: Page 494 of the Hearings before the Committee on Finance of the United States Senate.

XQ. 299 (continuing).

"My dear Benefactors and Friends. Assembled in Hohen Hause, Wilhelmstrasse, 74:

"Perhaps by the time when you receive these lines Herr H. A. Metz, of New York, will call with a letter of introduction. I wish earnestly to re-

quest you to take good care of him and treat him very nicely. Maybe you will take him to breakfast some time or show him other favors after the American fashion, in the event that Excellenz Richter or Dr. Muller do not do it. I am afraid they will be too busy.

"At the same time I call your attention to something which you will have the kindness to bring before the proper authorities:

"In considering all the favors to which Herr Metz is entitled it must not be forgotten that he is a competitor of the other dye works. For that reason I have just cabled you that the bonds covering re-export of dyestuffs are to be deposited with me. Also in alloting ship space for return freight it must be remembered that the other chemical works are to have a word to say. I earnestly recommend that this exportation of dyestuffs be somewhat more favored than has heretofore been the case, perhaps through my own suggestion, as otherwise there is danger that America itself will take up the production. Plans are already being prepared for a high protective tariff, which will be taken up by the Congress which meets in December. As Metz is a Member of the Congress, he is the right man to fight this measure."

That is the letter of introduction?

A. No, sir; I did not carry that letter.

Mr. Anderson: Then I move to strike the letter from the record. It is a communication from Dr. Albert to the German Government and Mr. Metz did not have it.

The Witness: I never saw it.

Mr. Anderson: And he says he has never seen it. Of course it goes out of the record, I assume.

Mr. Kresel: Just a minute, please. Not quite so fast about it going out of the record.

The Court: Just a moment, Mr. Kresel. It is embodied in a question and he denies having

had it. I do not see how I can strike his question out of the record.

MR. KRESEL: He said at first, your Honor——

THE COURT: You will pardon me a moment, Mr. Kresel. But it necessarily is without value, although I do not see how I can strike out the question.

MR. ANDERSON: May I suggest this. This letter is not addressed to the witness in any way. Therefore, while I did not wish to object to it not knowing what counsel's purpose was, I respectfully suggest that the question and any answer thereto be stricken from the record because it is a communication between a German who is claimed here to be an official of the German Government and his friends, whoever they may be, at some place in Wilhelmstrasse. The witness has never seen it and had nothing to do with it. I might have written a similar letter to the English Government.

THE COURT: I did not know that until after the witness answered.

MR. ANDERSON: Neither did I. Therefore I submit that the question should be stricken. He was asked whether he had this letter of introduction.

THE COURT: But Colonel Anderson, you are advancing a proposition that is entirely new to me and I will get you to give me your authorities. I do not know of any authority of a Court to strike out a question. If counsel have used the privilege of asking questions—and I assume no suggestion is thought of by you at this stage, in view of the general rule which we have laid down in this case—there is one method of redress. The Court has power under such circumstances to protect itself, but I do not understand in an equity case that

a question asked by counsel is ever stricken from the record, I have never known it, have you?

MR. ANDERSON: I have known it, sir, where the question itself undertook to put on the record matter which was absolutely immaterial and which is improper in the record. I have known of it being done, but of course those things are largely in the discretion of the Court.

THE COURT: I can not conceive of any possible harm that it can do you, that is, that the question can do you.

MR. ANDERSON: I might state, if your Honor please, that in the Appellate Court, if I may refer to the Appellate Court, when we come to the argument of this case on briefs, this record is going to be a good many thousand pages. That Court will never find time to examine this record carefully, never will read it, I assume, because I do not imagine they could ever take the time and do their other duties. Matters of this kind can be referred to and pointed out on the record, and unless elaborate briefs are filed calling attention to it—and even then it is very difficult—it is extremely prejudicial in a case of this kind to inject into the record matters which have absolutely nothing to do with the case and allow them to stay on the record.

I take it that the record in this case is absolutely under your Honor's control, subject of course, to the use of judicial discretion. This letter was never shown to this witness and he was not asked whether he ever saw it, but it was read on the record. Therefore, I respectfully suggest, and submit to your Honor's judgment of course, that it be stricken from the record, and that counsel be required—I do not use the word in an unpleasant sense, but I know he will—to ask his

questions without putting on the record matter of this kind without first finding out from the witness whether or not the witness has any knowledge of it, so that we can make our objection at the proper time.

THE COURT: I will be glad to hear you, Mr. Kresel.

MR. KRESEL: I have nothing to add, your Honor. I asked this witness whether he carried a letter of introduction from Dr. Albert. He said he did. Then I read him the letter and asked him whether that was the letter and he said "No." That is where the record stands.

MR. ANDERSON: I suggest that that letter should have been shown the witness and not read into the record. If it had nothing to do with the record, it should be stricken from the record.

THE COURT: Colonel Anderson, the best I can do to protect you, as I see it, without laying down one broad rule for you and a narrower rule for the defendant, is to state here that that letter as it now stands is wholly without value in this record. The method of identifying the letter was not challenged prior to its being read. What the ruling would have been then, I shall not attempt to say because that is a past event. But as it now stands, I do not see how I can strike it from the record, the method of identifying it not having been objected to at the time. You may have such exception as you desire.

MR. ANDERSON: I will ask leave to note an exception.

XQ. 300 Let me have the letter of introduction that Dr. Albert gave you?

A. I haven't got it. It was left over there in all probability, unless it is in the record here.

XQ. 301. You did go to Europe, and on the way over, did you go to England?

A. No, I went to Holland. I went via Holland.

XQ. 302. You did not go to England at all?

A. No, I took a Dutch steamer to Holland, to Rotterdam. I passed through Dover.

XQ. 303. You remember giving an interview to the Brooklyn Eagle May 6th?

A. I do not recall, unless I see it.

XQ. 304. Look at it and also at the same time look at this letter that you wrote to Dr. Albert sending him the clipping?

A. Yes, that is right, substantially correct, an interview such as reporters usually get.

XQ. 305. Of course.

A. Without a chance of looking it over. They put in what you say and what they think you ought to say.

MR. ANDERSON: Are you going to offer that in evidence?

MR. KRESEL: Just a minute.

XQ. 306. This letter is dated May 9, 1916, and speaks of the clipping as being from the Brooklyn Eagle of May 6, 1916.

A. Yes; before we entered the war.

MR. KRESEL: I did not even hear what he said, your Honor, but after the word "yes," I ask that it be stricken out.

THE COURT: Let it be stricken out.

XQ. 307. You were not neutral in the war, were you?

A. Yes, sir; I was neutral.

MR. ANDERSON: I object. This gentleman has testified that he was a citizen of the United States and born in the United States; and a citizen of the United States is a neutral. What might be his conclusions as to a mental attitude is not evidence in this case.

XQ. 308. Didn't you say that you were not neutral?

THE COURT: Just a minute, Mr. Kresel. This is cross-examination, Colonel Anderson. What is the test of neutrality?

MR. ANDERSON: The test of legal neutrality is the status in the country, by International Law.

THE COURT: What is the test of individual neutrality?

MR. ANDERSON: I have no idea, sir. I do not know of any such thing as individual neutrality. Neutrality is a status in International Law; and while we were enjoined to think neutrally, I suppose that would be the real test of personal neutrality. I am frank to say that I do not think that it is a test, that there are any such things as neutrals. Any man who has red blood in his veins is not a neutral on any subject. Therefore the sole meaning of a neutral in law is the status of a citizen of a country and that status is fixed by law and by the Government.

THE COURT: We are not concerned with that.

MR. ANDERSON: Certainly not. That being the case, it is perfectly competent, if it has any relevancy here—and I can not see any relevancy in any of this examination—but if it has any relevancy here, he can ask him what he did and what he said. But as to his mental attitude, whether he thought neutrally or whether he was a neutral, that involves a question of fact and law which is a conclusion and as to which nobody can speak except a most adroit lawyer. I can not. I am frank to say I can not state what a neutral is.

THE COURT: I shall permit the answer under the general rule.

MR. ANDERSON: May I note an exception, please.

THE COURT: Certainly.

XQ. 309. Did you say in this interview published in the Brooklyn Daily Eagle that "the only neutrals I know of in this country are in Greenwood Cemetery?"

MR. ANDERSON: I object on the ground that the evidence of what he said in that interview, it having been published, is the paper itself, which is the best evidence; and if they are going to examine him on it, I ask that it be introduced in evidence.

THE COURT: I do not see how you can reach that conclusion, Colonel Anderson. I think you must have overlooked the fact that he did not write the interview, so far as I know. Now then, he had an interview which was reported, I suppose, by the persons with whom he had it. There were two persons at least present at that interview. One was the person speaking. The other was the person spoken to. He is asking the person doing the speaking as to whether he made certain statements and I do not know of any better evidence than that, unless the interview was in writing.

XQ. 310. I think you answered just before Colonel Anderson had a chance to object.

A. What was the question?

XQ. 311. I will repeat it. Did you say in this interview that "the only neutrals I know of in this country are in Greenwood Cemetery?"

A. I may have expressed such a sentiment.

XQ. 312. Did you say in the interview as follows: "That my thoughts are with Germany in this war does not blot my Americanism?"

A. I do not know as I said that. I probably felt that way.

XQ. 313. Prior to the outbreak of the European

War, is it a fact to your knowledge that Germany had a monopoly of the dyes and pharmaceuticals?

A. Yes, sir.

XQ. 314. As you expressed it before the Shortride Committee, and I assume it was true, Germany had the whole world in their hands.

A. Practically.

XQ. 315. Practically?

A. Yes.

XQ. 316. And as you again expressed it before that Committee, Germany had the world by the throat——

A. Practically.

XQ. 317. ——with referenec to dyes and pharmaceuticals?

A. That is true.

XQ. 318. And it is true is it not that manufacturers in this and other countries that were using dyes were absolutely dependent on Germany for their supplies?

A. To a large extent, yes, sir.

MR. ANDERSON: Your Honor please, I wish to make the objection, not to the line of examination, although I think it is subject to technical objection, but to the fact that this matter is entirely outside of the original examination.

I wish to make the objection at this time because I gave notice in my opening statement and I wish to repeat that notice now, that I am going to object to any evidence relating to Germany's position before the War or Germany's attitude prior to our entrance into the War, on this subject, on the ground that it is utterly immaterial and irrelevant to the issues in this case; that that was not a question for either the Alien Property Custodian or this corporation to consider, but one for Congress.

I want to make that objection now both on the ground that it is not cross-examination and that it is utterly immaterial and irrelevant in the second place. I am not going to renew the objection except where it is necessary apparently to make the record clear.

THE COURT: Colonel Anderson, may I make one inquiry before I hear from Mr. Kresel? Does not the soundness of your contention depend upon the ultimate construction of the Act of Congress, not in the way you stated it, but in this way? If the power of seizure and sale was vested by Congress in the Alien Property Custodian, and the power to sell at private sale was authorized by the President or some officer designated by him, is not one possible construction of that Act that the power originally vested in Congress was transferred by it to the Alien Property Custodian with or without the order of the President?

MR. ANDERSON: I am going to try to answer that. I am just trying to get my answer direct to your Honor's question. If your Honor should hold that Congress had the power to delegate its legislative functions and discretion to the Executive Officer of the Government, then possibly there may be some contention of that kind.

THE COURT: I am not going to hold that.

MR. ANDERSON: But you have to cross that bridge before you get to any such possible construction.

THE COURT: Is there any merit in this thought —and I am not trying to confuse the matter of construction of the Act.

MR. ANDERSON: I understand, sir.

THE COURT: I am keeping away from the construction of the act. I will consider the act ultimately but not now. May not Congress be considered to have exercised that legislative function,

and not to delegate its legislative power to an Executive officer, but to have conferred upon the Executive officer or have made him the agent or the instrumentality for carrying out the provisions of the Act, by which Congress exercised its own power. I do not know whether that is sound at all or whether there is any merit in it, I can make no suggestion as to that; but without going into that, it seems to me in view of the wide scope we have given to the admission of testimony, the testimony must be admitted on any theory that may with any soundness be advanced as a possible construction of the Trading with the Enemy Act, and that we must either construe that act now or admit testimony which may be relevant under any possible construction of the act.

MR. ANDERSON: Your Honor, may I just say a word in reply? I bow to your Honor's decision without the slightest hesitation, but I wanted to get your Honor's consideration on this thought. I quite agree it is not only law but a fact that counsel should have the right in a case of this character, especially, to introduce any evidence which they think tends to support any reasonable theory of their case that they can advance, to the end that that theory may be properly argument to come before the Court. I quite agree with that. But in the second place, there is a limitation, of course, upon that principle, and of course it is for your Honor to determine how far now you are going to decide that limitation should go or where you are going to place it. Therefore, in making my objection I felt I ought to state that I can see—and I will make it deliberate—no possible construction of this act which can make the action of the German citizens or Government prior to 1919 of the slightest bearing upon the questions pre-

sented by this Bill and Answer for decision. I do not say that it is not a reasonable limitation.

THE COURT: I understand.

MR. ANDERSON: But I mean to say that no possible construction of the act can give that any bearing. Because if it can be considered, it involves the question of the highest policy which is vested in Congress exclusively and as to which Congress only can legislate or act, and it can not give that power to anybody else.

I have said this that your Honor might understand my position. I quite understand what your Honor's ruling is, that this evidence will go in, but I wish to note that I am objecting to all of this examination, without renewing the objection each time and taking exception, as has been done heretofore; and I further object to this examination as not being within the scope of the direct examination.

MR. KRESEL: The latter part is the only portion on which I would like your Honor to hear me. I consider this evidence directly bears on this witness's testimony as to value. Any history that we can present to your Honor with reference to this industry and the German control here prior to the war, as to which this witness has given your Honor figures as to his profits and as to his sales, I consider to be most material upon the question of value.

THE COURT: The immediate question before me now is what?

MR. KRESEL: Your Honor has ruled, as I understand, that the witness may answer the question.

THE COURT: I have forgotten what the question is and I do not know whether I have ruled on it.

MR. KRESEL: The last question was answered.

THE COURT: Then as to the scope of the cross-examination, we had that question with the first witness that was produced here, Colonel Anderson, and the same questions that are now arising arose there, substantially. So that I am not prepared to hold that this line is not in cross-examination. If you can at final argument throw doubt upon its value or show to me that the witness is answering questions that are not in cross-examination and that Mr. Kresel necessarily makes him his own witness as to them, I will hear you then; but I think at the present time they are not outside the scope of the cross-examination.

XQ. 319. Before the sub-committee of the Committee on the Judiciary of the United States Senate on Senate Resolution 77, at page 744, you testified as follows:

"Germany had a practical monopoly in the production of dyes and pharmaceuticals."

That was true, was it not?

A. Yes, sir.

XQ. 320. And at page 745 on that same occasion you testified:

"Germany had the monopoly; there is no question about that. They had the world in their hands. That is conceded, absolutely. There is no question about that. They had the whole world in their hands."

That was true, was it not?

A. Yes, sir.

XQ. 321. And at page 894 of the same record, the same proceeding, you testified as follows:

"Germany had the world by the throat absolutely."

That was true, was it not?

A. Yes, sir.

THE COURT: We will take a recess until 1 o'clock, Standard time.

AFTER RECESS

MR. ANDERSON: Without, I hope, appearing insistent, if your Honor please, during recess I have had an opportunity to look at this record from which a letter was read this morning purporting to have been signed by Albert, which I move to strike out in view of the fact that the record from which counsel read contained, immediately following the letter, the statement by the witness, Mr. Metz, who was before the Committee, as follows:

> "Just want to say that I never saw such a letter, and if I carried it the contents were not known to me personally. I carried dozens of letters."

In view of that fact appearing on the record in connection with a letter as introduced before the Committee, I respectfully suggest that that letter should be stricken from the record. In saying that I do not wish to impute to counsel any ulterior purpose in reading that letter. Frequently during an examination counsel do it thoughtlessly, and I did not wish to interrupt. But I do think, in view of the record accompanying the letter at the time it was brought to the attention of the Committee, that it should be stricken from the record.

MR. KRESEL: If your Honor please, I do not object to your Honor's granting the motion, in view of what Colonel Anderson has just shown.

Personally, I was not aware of the statement that Colonel Anderson now speaks of, except that I may say this: that your Honor will recall that when I asked the witness whether he had a letter of introduction from Albert, he said he had, and then I read this letter, and when he said that was not the letter, why, that settled it. So if your Honor desires to grant the motion, I raise no objection.

THE COURT: The motion is granted by consent.

XQ. 322. Mr. Metz, after the European war broke out, Germany placed an embargo upon the exportation from Germany of dyestuffs, did it not?

A. I was so informed.

XQ. 323. And not only dyestuffs, but also pharmaceuticals?

A. Everything, practically.

XQ. 324. You were instrumental, if I may put it that way, in trying to get dyestuffs from Germany for the American market?

A. Yes, sir.

XQ. 325. And in connection with that effort you wrote a letter to Mr. Tumulty, the Secretary of President Wilson, did you not?

A. Yes, sir, quite a number of letters.

MR. ANDERSON: Your Honor will understand, of course, this is subject to objection, which I made this morning, as being outside the direct examination.

THE COURT: Yes.

MR. ANDERSON: But I do not want to renew it, as I understand this is all taken under that objection, except that your Honor wanted me to call your attention to it.

THE COURT: I think so, yes. My impression at the moment, Colonel Anderson, is that this is

not outside the scope of cross-examination. So I overrule your objection to this question on that ground.

MR. ANDERSON: Exception.

XQ. 326. Before I direct your attention to this letter that you wrote to Mr. Tumulty I want to ask you whether before writing that letter you did not organize a committee of dye users and call with them upon Mr. Tumulty in reference to these German importations of dyestuffs?

A. I did not organize a committee.

XQ. 327. Did you call with the Committee?

A. The Committee called on me and I went with them to see Mr. Redfield and Mr. Tumulty.

MR. KRESEL: That is all I wanted to know. Colonel Anderson, I am looking now at page 268.

MR. ANDERSON: Of the same book?

MR. KRESEL: No, of the Hearings before the Sub-Committee of the Committee on the Judiciary of the United States Senate.

XQ. 328. Please look at this, Mr. Metz, beginning at the bottom of page 268 and running over onto page 270, and state whether that is a copy of the letter that you sent to the President's Secretary? (Handing witness book.)

A. I assume that is a copy.

XQ. 329. May I have it, please.

A. Certainly. (Handing counsel.)

XQ. 330. This letter is dated April 8, 1915. Up to that time had you succeeded in obtaining from Germany any dyestuffs or pharmaceuticals?

A. Yes, sir.

XQ. 331. Since the outbreak of the war?

A. Yes, sir, regularly.

XQ. 332. Up to April, 1915?

A. Up to the time of the Order in council which stopped further shipments.

XQ. 333. In other words, up to April, 1915, the American market had all the dyes it wanted?

A. It had sufficient dyes.

XQ. 334. You think it had sufficient dyes?

A. I think it had. We kept them supplied.

XQ. 335. But in April, 1915, there was this shortage, was there?

A. April 1st there was an order in council stopping all the importations.

XQ. 336. And a shortage occurred?

A. It gradually became short, naturally.

XQ. 337. And it was in connection with that that you wrote this letter to the President's Secretary?

A. Yes.

XQ. 338. You say in this letter: "My dear Mr. Tumulty"——This is addressed to Honorable Joseph P. Tumulty, White House, Washington, D. C.

> "My dear Mr. Tumulty: Referring to the visit of the committee that called on you Tuesday, I am enclosing herewith, as requested, extracts from some of the letters from textile manufacturers which I showed you.
>
> "I received all told about 450 replies in answer to about 1,000 circular letters which I sent out, mainly to the cotton, wool and silk mills, calico printers, job dye houses (that is, those dyeing for mills who do not do their own dyeing), and to some extent to the paper, wall-paper, leather, paint and printing ink, and other branches."

Prior to sending that letter then, you had sent circular letters to these various industries, had you?

A. I wrote to the industries inquiring of their needs.

XQ. 339. "I received approximately 270 replies giving definitely the number of employees in each mill which would be directly affected; a further 160 did not specify the number that would be out of work, but said

they would be compelled to shut down within 30 to 60 days and discontinue operation." That is true?

A. Yes, sir.

XQ. 340. "Those who gave the number totaled 260,000 employees. Assuming the other 150 to employ the same number of people, this would give an aggregate of approximately 400,000 people directly affected in those mills that replied."

A. Yes, sir.

XQ. 341. "As there are probably 1,500 to 2,000 plants of the kind to which I wrote in the various industries throughout the United States, it is easy to assume that probably 2,000,000 operatives will be affected directly, without considering at all those occupations or trades to which the output of the factories goes, and for which it is really the raw material. In other words, the cutters, garment makers, etc., and the jobbers, wholesalers, and retailers who handle the product all along the line until it finally reaches the ultimate consumer. Then, furthermore, we must consider that when the cotton mill shuts down it is no longer using cotton, nor the woolen mill or carpet mill using wool. Their supplies of machinery, machinery oil, coal, belting, and the thousand and one other items that enter into manufacturing must also suffer in proportion."

Now, when you wrote as I have just read and you speak of "suffering in proportion," do you mean suffering because of the lack of dyestuffs?

A. Certainly.

XQ. 342. That is what you meant?

A. Certainly.

XQ. 343. Now I skip a paragraph, Colonel, because I do not want to take any more time than is necessary, and I read as follows from this same letter:

> "After leaving you I had a talk with Mr. Secretary Redfield,"

Mr. Secretary Redfield was the Secretary of Commerce at that time?

MR. ANDERSON: That is agreed.

XQ. 343 (continued). ——"who seems imbued with the idea that we are going to take up manufacturing in this country and has been 'assured' by some people that they can do these things. I have no desire to reflect at all on Mr. Redfield's judgment, but these optimistic reports about what we are going to do here in regard to dyestuffs have caused enormous damage already. There have been practically no dyestuffs made in this country heretofore, excepting from raw materials or intermediate products imported from Germany." Was that true?

A. That is true.

XQ. 344. "The basic raw material we have we have always had here, and after July 1 will have enough for all possible contingencies, viz., the benzol obtained from coke ovens. The next step is to treat the benzol with nitric acid, making nitro-benzol, which can also be done here, and that in turn yields the next step, aniline oil. Aniline oil is used for dyeing black and also for making certain very primitive and very fugitve colors in connecton with beta-naphthol and other intermediate products previously imported and which a number of people are 'going to make'."

And you put quotations around the words "going to make."

"But so far nobody has made except in a very crude form at one plant, and for its use only."

That stated the facts as they existed at that time?

A. Yes, sir, entirely.

XQ. 345. As a matter of fact, you go on to say in this letter: "There are only three manufacturers of beta-naphthol in the entire world, all in Germany." That was true?

A. Yes, sir, to the best of my knowledge that was true.

XQ. 346. "The product heretofore used here, a refined, pure product containing no admixtures of other compounds, sold at about nine cents per pound including five per cent duty before the war. None has been imported since; in fact, no raw material or intermediate products, excepting in very limited amounts for specific purposes, have been allowed to leave Germany, probably for the reason that Germany did not desire to encourage manufacturing of colors to her own detriment." And that was true?

A. Certainly.

XQ. 347. I skip the next two or three paragraphs and I turn over to the next page, Colonel. You say as follows:

> "The plant I am interested in abroad cost about $50,000,000 to erect and is capitalized now for only $12,000,000."

I want to stop there. What plant is it that you are speaking of in that letter?

A. The Hoechst plant which I was agent for, whose products I imported.

XQ. 348. "It employs about 8,500 people. There are two other plants of the same size, with a half-dozen smaller ones. It is fair to figure, therefore, that there are invested in the coal tar color and pharmaceutical plants in Germany three or four hundred million dollars, and probably 25,000 people are employed in all of the plants I refer to. But these plants supply the whole world with these products directly or indirectly."

Those statements were true?

A. Practically true; cover the situation.

XQ. 349. In the next paragraph you say as follows:

"It took the Germans 50 years to get to this point, and it will take us 20 years, with an exorbitant protective tariff, and then we would still be floundering, because it is more a matter of engineering and practice than it is of chemistry."
That was true?

A. I still maintain that opinion.

XQ. 350. You go on and say:

"It may be well to establish an industry, but while we are doing it what is going to become of the people working in the mills, which will simply be forced to shut down, because the German products are not available and can not be substituted?"

That is what was bothering you, is it not?

A. It was bothering me for the sake of my business, yes, sir.

XQ. 351. You go on and say:

"I know they are 'discovering' things"——

And again you put the word "discovering" in quotation marks.

A. Yes, sir.

XQ. 352.

——"in the newspapers every day, but the people who do it have no conception of the quantities involved or what the requirements of this country are. It is safe to say that 3,000 tons a month of various colors, which is practically what we have been getting from Germany since the war started, and which has kept us going fairly well, would not be two-thirds enough to keep us running if our mills were busy and we were running full."

That was a fair estimate, was it?

A. That is right.

XQ. 353. Now then, the fact is, is it not, that the same plants that were producing dyestuffs also produced pharmaceuticals?

A. Yes, sir. Some of them produced pharmaceuticals.

XQ. 354. Well, you say in this letter to the President's Secretary as follows:

> "I am not touching on medicines at all. Of most of these products we import there are probably three or four months' supplies here."

In other words, at the time you were writing there were three or four months' supplies of medicines here, medicines such as could be gotten only in Germany; is that right?

A. Shows that I was interested.

XQ. 355. Yes, that is what I am talking about.

A. Yes, sir.

XQ. 355-A. And then you say:

> "But the same plants that are making dyestuffs and chemicals are the ones that are making most of the synthetic and highly organic products, which have practically replaced most of the old things in medicine. We can go back and do the same as we did before they were invented, but it is not hard to see what that means. Undoubtedly some steps should be taken later on to make us a little more independent in some matters, through legislation or otherwise, but those things are for the future."

MR. ANDERSON: Have you finished?

MR. KRESEL: I have finished as much of it as I care to read.

MR. ANDERSON: If your Honor please, to save interruption of counsel, I would like to object specifically to the matter read from this letter, and to the questions and answers with respect thereto, on the ground that it is immaterial and irrelevant; on the grounds stated in my opening statement, and which need not be repeated; and on the further ground it is not within the direct exam-

ination and does not relate thereto. And I would suggest, if agreeable to counsel, that that objection be considered as applying to each specific question and answer thereto, and that, if overruled, an exception taken; provided your Honor should so decide. That would save me the necessity of interrupting.

MR. KRESEL: I have no objection to that at all.

MR. ANDERSON: That is agreed.

THE COURT: I think Mr. Kresel has not yet gone beyond the bounds of cross-examination.

MR. ANDERSON: I just want to get my record straight.

THE COURT: I understand that your exception will be general, and that you may avail yourself of that at any time during this case, and you can make specific objection to any question that Mr. Kresel brings out.

XQ. 355-A (continued). At the time of the outbreak of the European War, were there any factories in the United States producing dyestuffs or colors?

A. Yes, sir.

XQ. 356. How many were there?

A. About half a dozen.

XQ. 357. Were there not only four?

A. Well, there were four larger ones?

XQ. 358. What were they?

A. The Schoelkopf plant in Buffalo, Heller & Merz in Newark, the Bayer plant in Albany.

XQ. 359. Yes?

A. My plant.

XQ. 360. When did that start?

A. That started back in '2 or '3 or even before that.

XQ. 361. When did the Central start?

A. That is quite a number of years back. It must have been twenty years before that.

XQ. 362. Before the war?

A. Yes.

XQ. 363. Were any of these factories that you have just mentioned manufacturing from intermediates that came from any other place than Germany?

A. Germany and England. Mostly Germany.

XQ. 364. All imported?

A. All imported.

XQ. 365. In other words, as you said as I have it here, before the Shortridge Committee, these four or six plants were what you would call assembling plants?

A. They were more than that because they imported much of their intermediates.

XQ. 366. Didn't you say they were assembling plants?

A. Well, practically, if you call it that.

XQ. 367. The Germans to your knowledge were seeking before the war to prevent any manufacturing of dyestuffs in this country; is that not right?

A. One of the German plants had a plant here.

XQ. 368. Will you answer my question?

MR. ANDERSON: I will have to add to my general objection that the question here not only asks for a conclusion, but, of course, is entirely outside of what I went into. It asks the conclusion of the witness as to preventing something being done. Under your Honor's ruling and subject to the objections which I have indicated we recognize that the counsel can ask the witness as to any facts he knows as to what was done, but as to the purpose and intent thereof, they must be drawn by the Court from the facts so proved. Therefore, I think the examination is improper on that ground in addition to the general objection stated.

MR. KRESEL: Upon cross-examination, your

Honor, it seems to me in view of the manner in which the Government has been permitted to put in its case on the direct, that I should be permitted to put to this witness the question that I just put to him.

THE COURT: I think it goes to value on cross-examination. If it is admissible at all it is particularly admissible here by reason of the relation of this witness to the German industry which he has disclosed.

MR. ANDERSON: I have no objection other than the general objection before stated. I am not renewing that objection because that is understood to apply to all this line of examination. The objection here was to the form of the inquiry which called for a conclusion of the witness and his judgment as to what the legal effect of a thing was.

THE COURT: This is cross-examination and that is given a very broad scope. You may take the answer.

MR. KRESEL: I think that question was answered, so I shall proceed to the next.

XQ. 369. Not only is it a fact that the Germans tried to keep anybody from manufacturing dyestuffs and pharmaceuticals here in the United States, but is it not a fact that they wrote to you and protested against your manufacturing here?

A. Yes, sir.

XQ. 370. I read to you a letter from page 668 of the Hearings before the Committee on Ways and Means, from Mr. Blank to the Farbwerke-Hoechst Company of Germany, dated August 5, 1915. I am going to ask you whether you received this letter. Suppose you look at it before I read it?

A. It is like a copy of one I received.

XQ. 371. Who is Mr. Blank?

A. Mr. Blank was a director of the Farbwerke-Hoechst.

XQ. 372. This letter is dated August 5, 1915, marked "confidential," and reads as follows:

"Dear Mr. Metz:

"Your friendly letter of the 14th ultimo received and I send my best thanks for your esteemed communication. I am still awaiting the receipt of the revised accounts sent by Mr. Spielhagen."

I want to stop there a minute. Have you a copy of your esteemed letter of the 14th that he is talking about here?

A. Not now; not with me.

XQ. 373. "Regarding the Bethlehem Coal and Iron Company and the Deutsche Bank, I have heard nothing, and I can hardly believe that under existing conditions the Deutsche Bank would support any such undertaking to the detriment of the German dyestuff industry.

"That Bayer is in back of it"—

Bayer refers to the Bayer Company, does it not?

A. The Farbenfabriken of Leverkusen, formerly Frederick Bayer & Company.

XQ. 373. (continuing) "That Bayer is in back of it, I believe even less, for I know from only recent reports that no German dye factory even considers during the present shortage of chemicals to manufacture anything new over there."

"Over there" refers to the United States, does it not?

A. Yes, sir.

XQ. 374. "Bayer would certainly not undertake, as far as one can see, to take up something new when the few articles (blue, Vesuvin, Bismark, brown, fuchsin) have already been delivered by them over there."

"We lay great stress upon the fact that you

personally will not participate in any manufacturing enterprise.

"The present condition can not last much longer. If our successful movement in Russia continues in the same ratio as during the last week, the Russians will finally get war weary and they will then be compelled to sue for a separate peace which would quickly change the situation.

"As soon as normal conditions return, those who took advantage of the present abnormal and uncertain conditions to build up new enterprises will later have to suffer heavily."

You got that letter, did you not?

A. Yes.

XQ. 375. I show you another letter from Mr. Blank dated September 28, 1915, and ask you if you received that; and while you are looking at it, please look at the one following that, because I would like to to know, also, whether you received that?

A. Yes, both of them.

XQ. 376. I am now reading from page 668 of this same volume. This letter is dated September 28, 1915, Hochst on the Main, addressed to Mr. H. A. Metz, New york:

"Dear Mr. Metz:

"From competitive circles we received the information that despite the fact that you have no dyestuff factory and are therefore not compelled to further the interests of your dyestuffs customers by manufacturing some new product, you have begun the manufacture of tar products in a factory of Prochaska.

"We refer to our previous correspondence, and beg you to inform us over here what and where you have, in your name or with your support, begun manufacturing.

"Unfortunately, it appears to be true that Bayer's representatives over there is viewed by all the factories as being, under the stress of cir-

cumstances, a matter of compulsion in manufacturing new products, against the agreement with Elberfeld."

What did you understand the agreement to be with Elberfeld?

A. I didn't know what agreement they had except they were controlled by Elberfeld, and apparently did not care what Elberfeld thought. They went ahead and made colors for this country.

XQ. 377. And the letter of November 12, 1915, from Mr. Blank:

"Dear Mr. Metz:

"Your detailed information, on October 20, per Oscar II, thankfully received and carefully noted."

Have you that letter?

A. No, I sent it abroad.

XQ. 378. Have you a copy?

A. I do not believe I have. If I had, the record would have shown it. Mr. Garvan put the record in.

XQ. 379. You have not a copy that you can produce?

A. I have not a copy now.

XQ. 380. Have you a copy of any correspondence with your German firm abroad?

A. They were all given to the Alien Property Custodian, every one I had.

XQ. 381. Have you or have you not, that is my question?

A. I haven't with me today.

XQ. 382. Well, have you it so that you can produce it on Monday?

A. The Alien Property Custodian had them all; all I had.

XQ. 383. I am asking you whether you have?

A. I should say no, in general principles. I have some. I can't say which ones.

XQ. 384. I will ask you specifically now to produce next Monday the letter of the 14th of July, 1915, written by you to the Hoechst people abroad and also the letter of the 20th of October, written by you to the same people?

A. If it is not in the record, I haven't got it.

XQ. 385. I continue reading. This is what Mr. Blank writes to you:

> "We have entered into an agreement with all other German dyestuff factories not to manufacture anything new over-seas for the present, either directly or indirectly, and for this reason we are pained at the thought that you should, through your brother, be interested in the Prochaska in the manufacture of the new articles manufactured from orange, echtrot, ponceau, and chrysoidin. We must now await what we should tell the trade if we are again questioned."

A. Yes, sir.

XQ. 386. What did you reply to that letter? Have you that copy?

A. No, but I know what I replied.

XQ. 387. Where is the copy of your letter?

A. I did not keep it in all probability. I sent it abroad. I did not keep this personal correspondence.

XQ. 388. You kept no copies?

A. Not of those things. Letters on matters of business I kept. These are personal matters.

XQ. 389. You not only wrote to the President's private secretary about these dyestuffs, but you wrote to the President himself, did you not?

A. On various occasions.

XQ. 390. I mean President Wilson?

A. Yes, and he wrote me.

XQ. 391. I show you copy of your letter to Presi-

dent Wilson under date of November 7, 1914, which is reproduced at page 775 of these Hearings before the Sub-Committee of the Committee on the Judiciary of the Senate beginning there (indicating). Please glance over it?

A. That is right. That looks like a copy.

XQ. 392. In this letter—I shall read only portions thereof—you say to the President of the United States:

> "The manufacturers of the United States as well as those of every other country in the world are practically dependent upon the German manufacturers for their supplies of dyestuffs and chemicals."

A. Yes, sir.

XQ. 393. When you spoke of the manufacturers, did you include among those the textile industry?

A. Yes, sir.

XQ. 394. The cotton industry?

A. All consumers.

XQ. 395. I am trying to have you enumerate them. That is what I am after. The textile industry?

A. Yes, sir.

XQ. 396. The cotton industry?

A. Yes, sir.

XQ. 397. The wool industry?

A. Yes, sir.

XQ. 398. The silk mills?

A. Yes, sir.

XQ. 399. The calico printers?

A. Yes, sir.

XQ. 400. The leather manufacturers?

A. Yes, sir.

XQ. 401. Paper manufacturers?

A. Yes, sir.

XQ. 402. Wall paper?

A. Yes, sir.

XQ. 403. Paint?

A. Yes, sir.

XQ. 404. Ink?

A. Ink.

XQ. 405. Any other that I have omitted?

A. Some food products; every one that used color was interested.

XQ. 405-a. You say in this letter to the President:

> "At the outbreak of the war, Germany placed an embargo upon the exportation of all products of this kind. The supply in the hands of importers in the United States was about sufficient to run our mills from six weeks to two months."

That was the fact?

A. Substantially correct.

XQ. 406. You say that after allowing two or three small shipments to come through a new embargo was declared by the German Government, which insisted first that vessels flying the American flag must be provided to transport these goods and, second, that a guarantee must be provided by the United States that no goods would be exported to any country with which Germany was at war?

A. Yes, sir.

XQ. 407. That was true?

A. That was true.

XQ. 408. In connection with your efforts to get importations of dyestuffs from Germany during this critical period you not only wrote to the President and to his private secretary, but you also wrote to the Secretary of State Mr. Bryan at that time, did you not?

A. Yes, sir.

XQ. 409. And on the other side you were in communication with Mr. von Bernstorff?

A. Through the State Department and for the State Department.

XQ. 410. You were in communication with Mr. von Bernstorff?

A. Yes, sir.

XQ. 411. Who was the Ambassador of Germany to the United States at that time?

A. Yes, sir.

XQ. 412. Without going into great detail about it, is this what you accomplished: You arranged with von Bernstorff that Germany would allow two shipments by two vessels, one named the Matanzas and the other named the Sun, shipments of dyestuffs to come through, provided the persons to whom the shipment was to be distributed in the United States would give a bond that they would not export what was given to them and that the United States would guarantee them?

A. That request came from the State Department.

XQ. 413. I did not ask you where it came from.

A. I could not make the arrangements myself without the State Department.

XQ. 414. I asked you if that was the result of your efforts?

A. I can not say of my efforts. The State Department's efforts. I became the medium for the State Department.

XQ. 415. I tried to shorten this, Mr. Metz, but if you will insist on that I will read to you the documents.

A. Well, go ahead; I can not answer yes or no to that.

XQ. 416. Very well, I will take it up in another way. I read to you from this letter to the President, at page 776. Listen to this: "After consultation with the Acting Secretary of State and the Solicitor of the State Department"—this is what you are writing to the President.

A. Yes, sir.

XQ. 417. "And with their approval, I placed the matter before Count von Bernstorff, the German Am-

basador, whereupon he telegraphed to his Government that there was no basis under our law permitting the United States Government to give or enforce such a guaranty; but that it would obtain, through me, from all importers a written guaranty that they would use every legal means to prevent exportation and a statement that they would agree to furnish any bond that the Government might prescribe." Now, that was the fact?

A. Those are the facts exactly.

XQ. 418. You say that in reply to this telegram Count von Bernstorff received official information from Berlin. How do you know that?

A. He told me.

XQ. 419. "That the German Government considered the guarantees to be filed with the State Department through me to be satisfactory, but nevertheless deemed it necessary to require a bond, and that such a bond should be given to me personally." Was that so?

A. Yes, sir; the letter is in the record stating that.

XQ. 420. In other words, Count von Bernstorff told you that his Government required as a condition of allowing dyestuffs to come through that a bond be delivered to you?

A. Yes, against re-exportation.

XQ. 421. Now, Mr. Metz.

A. I beg your pardon.

XQ. 422. Please. You have been very good, now please continue.

A. I will try to stay so.

XQ. 423. Were bonds subsequently delivered to you?

A. Yes, sir.

XQ. 424. And you held them for the German Government?

A. I held them against re-exportation, as directed by the Department of State.

XQ. 425. You held them for the German Government?

A. I held them for the importers—that they would not export.

THE COURT: Strike out the answer, Mr. Stenographer.

XQ. 426. Mr. Metz, did you not hold these bonds for the German Government?

A. I did not so consider myself. I considered I was doing it for the interests here.

XQ. 427. I read to you from page 746 of this record.

MR. ANDERSON: The same record?

MR. KRESEL: Yes.

XQ. 427. (continued) Perhaps this will refresh your recollection: "Mr. Metz. They would give a bond that they would not export these goods; that is, the people who receive these goods or these dyes from abroad, they could not export them.

"THE CHAIRMAN: Just a moment there: I want to follow that. Dyes imported or shipped to you?

"MR. METZ: No, no; not to me.

"THE CHAIRMAN: To whom?

"MR. METZ: To the consignees, who received these dyes from abroad.

"THE CHAIRMAN: Binding them to you—

"MR. METZ (interposing): The Government could not take the bond. I was to hold the bond for the German Government."

Did you testify that way?

A. I testified that way, yes.

XQ. 428. Was it true?

A. Certainly it is true.

XQ. 429. Then why did you fence with me a little

while ago when I asked you a dozen times whether you hold them for the German Government?

A. Why didn't you ask the full question, Mr. Kresel?

XQ. 430. Do you mean that you will testify here only what I can read to you from books?

A. I will testify to facts as they exist.

XQ. 431. Well, you did take the bonds, did you not?

A. Yes, sir.

XQ. 432. And after you got through those two shipments Germany shut down again, did she not?

A. No, sir; she did not shut down.

XQ. 433. How many shipments did you get through?

A. I got no more. I was not interested further; but they came through, half a dozen more came.

XQ. 434. After those two shipments is it not a fact that no more dyes or pharmaceuticals came in from Germany until the submarine Deutschland got here?

A. No, sir; it is not true.

XQ. 435. How many more shipments came in?

A. There were two more on the Matanzas and two or three boats, I think, until April 30th, when the order in council went into effect, and some arrived after that.

XQ. 436. What year was that?

A. 1915, when the British order in council went into effect.

XQ. 437. Between April 30, 1915, and the time when the submarine Deutschland got here did any dyes or pharmaceuticals come here from Germany?

A. Not to my knowledge.

XQ. 438. When did the Deutschland come?

A. I guess it was in—1916, was it?

XQ. 439. July, 1916?

A. On the first trip. She made two trips.

XQ. 440. The next one was in November, 1916?

A. I think that is in the record.

XQ. 441. You were one of the consignees of the dyes that came on the Deutschland, were you not?

A. Yes, sir.

XQ. 442. Were you not the one that was placed in charge by the Germans of distributing their dyes that came on the Deutschland?

A. I was not.

XQ. 443. Who was?

A. I don't know as anyone was. I think Mr. Albert had charge of it.

XQ. 444. Doctor Albert?

A. I think so, yes.

XQ. 445. Is this letter that I have been reading from, your letter to the President, the only letter that you wrote him in connection with this dyestuff importation?

A. I do not recall it. It is in the record. There were others, I presume.

XQ. 446. Don't you remember writing another letter to him?

A. Yes.

XQ. 447. You were quite interested in this situation, were you not?

A. Naturally.

XQ. 448. You went to the trouble of having printed your correspondence with the President, the Secretary of State and the other officials about this matter?

A. For the use of the consumers; yes, sir.

XQ. 449. And you distributed it among consumers?

A. Yes, sir.

XQ. 450. Look at this photostat of one of your pamphlets and state whether that is a copy of another letter that you wrote to the President (handing witness)?

A. I assume so, yes, sir.

XQ. 451. What?

A. I assume so.

XQ. 452. I want to read this letter to you. It is dated June 16, 1915. As I get your testimony, it is that after April, 1915, and up to July, 1916, no dyes came from Germany?

A. July, 1916?

XQ. 453. Between April, 1915, and July, 1916?

A. Not until the submarine got here.

XQ. 454. On June 16th, 1915, you wrote to the President of the United States as follows:

"Hon. Woodrow Wilson, White House, Washington, D. C.

"My dear Mr. President: I know that you are conversant with the serious situation that confronts the textile and other industries of this country through the failure to continue the receipt of dyestuffs and chemicals."

May I stop there a minute to inquire what your interest was in this thing. Was it that you were missing the revenue that you had been obtaining from selling these goods?

A. I was in the dyestuff business. Naturally, I wanted to take care of my customers.

XQ. 455. That is all I wanted to know.

A. And I was a consumer.

XQ. 456. "Efforts are being made to have the recent 'Order in Council,' allowing two shipments to pass, modified somewhat so that shipments will be allowed through on a basis that Germany will agree to."

Were you speaking for Germany?

A. No, I knew the facts.

XQ. 457. You had no relation to Germany whatsoever?

A. None whatever. No interest.

XQ. 458. Your communications with Count von Bernstorff you could consider simply friendly intercourses?

A. For the purpose of getting dyestuffs to this country.

XQ. 459. Yes.

A. Absolutely, and no other reason.

XQ. 460. In this connection you go on to say to the President of the United States: "An extract from a letter received from Justizrath Dr. Adolph Haeuser, president of the 'Verein zur Waehrung der Interessen der Chemischen Industrie Deutschlands' in Berlin"—which I will translate in a minute—"and which is composed of all the dyestuff and chemical manufacturers in the German Empire, dated May 26th, will probably interest you." Before I read the quotation which you have here of this letter from Dr. Haeuser, I want to know where that letter is.

A. I gave it to the representative of the Alien Property Custodian who examined my books in my office, I assume. If it was there he got it.

XQ. 461. Where is it now?

A. I don't know. I did not get half of the stuff back.

XQ. 462. You got some back, did you not?

A. Some of it I got back, yes.

XQ. 463. Did you get that back?

A. That I do not know. That is where they got it, though.

XQ. 463-A. Will you look among your papers and produce here next Monday morning this letter of Dr. Haeuser a quotation of which you are sending to the President of the United States?

A. I do not think I can find it, because I got most of the stuff here now, and that was not amongst them. That was eight years ago.

XQ. 464. This is what you say Dr. Haeuser wrote

to you: "I note that you have carried out your plan to organize 'an American Dyestuff Consumers' Association.' We here are gladly ready to send dyestuffs to America, but we rest on the standpoint that we can not accept this as a favor or gracious act on the part of England, but that we can only send dyestuffs when England recognizes the right of America to receive goods from us, and you send us cotton in exchange for such dyestuffs. This is also the standpoint of our Government.

"Any other standpoint would be unworthy of America or Germany. We are, of course, somewhat accustomed to seeing the American Government look at situations through two pairs of spectacles according to whether Germany or England is concerned in the question."

May I stop here a minute. Were those your sentiments?

A. Yes, and I think it was quite true. The general sentiments.

XQ. 465. "England might simply deny American suggestions off-hand and the American people yield with astonishing submission, although the entire carrying on of the war on the part of England and her allies depends entirely upon the good will of America. When Germany, however, does anything towards using her own good rights, the act is decried in America. I hope America will succeed in forcing England to stop interfering with commerce between Germany and America, and if so, you will find us only too glad to gi[illegible] you all the dyestuffs that you need."

That is what Haeuser wrote to you?

A. Yes, sir.

XQ. 466. And that is what you transmitted to the President of the United States?

A. Yes, sir

XQ. 467. In other words, you transmitted to the

President of the United States a statement by Haeuser who says that was also the sentiment of the German Government, that only if America would compel England to lift her blockade, could America get dyestuffs or pharmaceuticals from Germany?

A. He did not say that. He said if we gave them cotton, they would give us dyestuffs.

XQ. 468. I will read you again:

"I hope America will succeed in forcing England to stop interfering with commerce between Germany and America."

A. Yes, sir.

XQ. 469. "And if so, you will find us only too glad to give you all the dyestuffs that you need."

Then you go on, writing to the President:

"I submit this was the situation as it is developed by Dr. Haeuser, who at the present represents officially the entire chemical industry as President of the Berlin organization. This simply indicates that they have available goods in Germany which we need here and which we can get if Germany is assured that the goods will not be taken back by England and that she will get cotton in return. I submit this extract to you for what it is worth, knowing that you appreciate the situation, and assuring you that so far as I am concerned I fully appreciate the delicacy of the situation that confronts us."

A. Exactly so, and I discussed it personally with the President.

XQ. 470. Now, Mr. Metz, you testified before the Senate Committee, page 298:

MR. ANDERSON: Which volume is that?

MR. KRESEL: That is the Committee on Finance.

XQ. 470. (continued) "The Germans took out patents here for everything. They took advantage of our patent laws, which gave them a right to patent

anything here, and we could do the same thing in Germany. Now, if the patent laws were at fault, you can not blame them for taking advantage of them. They patented everything in sight, which was perfectly right, so as to protect themselves. The patent laws gave them that advantage, and they said, 'Why should we build plants in America? We are all scattered now and America does not use ten per cent of our output.' "

Did you so testify?

A. That is the substance of what I had in mind, whether I testified or not.

MR. ANDERSON: One minute. As this is apparently a new subject, I wish to renew the objection which I made at an earlier stage. Both the general objection of immateriality, irrelevancy and incompetency of this evidence, and that it is outside of any matter in the direct examination.

THE COURT: Will you tell me, please Colonel Anderson, just what, in your theory, is the limit to the testing of the credibility and the interest and possible bias of the witness?

MR. ANDERSON: I think it is extremely difficult to lay down any rule on that question. That is a matter in which the discretion of the Court is necessarily broad. But I do not think that it is quite competent to show the relationship of the witness to any of the matters referred to in the testimony. That is not quite competent. But if a question of this kind, and I think the examination which has preceded it, had any relevancy here whatever, I should not object in the slightest. My chief objection is that I do not think we can fight the war over in this case. That has been settled on the field of battle. And the question just asked as to the fact that the Germans took out patents, what the Germans did in 1915 or before the war,

certainly can not be relevant and can not have any possible bearing upon the decision of this case, or indeed, the testimony of this witness on direct examination, which went purely to the question of values.

THE COURT: Succinctly, what do you say is the specific objection to this inquiry taking into consideration that there are two fields that Mr. Kresel has a right to go into fully, namely, credibility, and the substance of his testimony, namely, values. May this not apply to either? If not, why not?

MR. ANDERSON: On the question of credibility you can show that a witness has made conflicting statements with those which he now makes. You can show any matter which tends to show mental prejudice against any factor in the case.

As I have said, the question of credibility is a very broad one, and I would not undertake to lay down, and I do not know of any authority that does lay down, any hard and fast rule on that subject. Every case must be decided by itself by the Court in the exercise of a sound judicial discretion.

I recognize that your Honor has a very broad discretion in allowing examination of this kind. I do not wish to interrupt it. I recognize that counsel should be given in this case rather unusually broad scope, on account of the character of the case. But I can not (it may be my own mental deficiency)—but I can not see the possible relationship to the issues in this case of the acts of the Germans in the effort either to gain an international advantage, in war or otherwise, before the war, when it has been fought out, or the fact that they did or did not import dyes, or any of the issues which were settled by this war.

In so far as they effect the credibility of this witness, if any connection between the two things can be pointed out, I recognize that your Honor's discretion will apply there. The only thing I can say under those circumstances when it seems to me to be not only absolutely immaterial and irrelevant upon any possible issue in the case, but also without any relevancy to the question of credibility or interest of this witness, that having been disclosed, is that it is not legitimate evidence

Therefore, I merely want to renew my objection, a new subject having been taken up, so that the record may be complete. Of course, I shall not attempt to argue against a ruling.

MR. KRESEL: If your Honor please,—

THE COURT: I was going to ask you if you would be good enough to state to me, Mr. Kresel, upon what issues the facts intended to be elicited by your question bear.

MR. KRESEL: As your Honor will see, the particular question to which objection has now been made refers to German patents. In other words, this question considers the very patents that are in issue here, as to which this witness undertook to give testimony. Furthermore, the passage that I have quoted here shows that the Germans did not work their patents here in the United States, and the reasons why the Germans did not do it, is given.

Now, upon the question of value, it is certainly material to show that the patents were not worked here, and not having been worked here, there was not the information necessary to make them valuable. This is of the utmost importance upon the question of value.

But quite aside from that, your Honor, I am glad of the opportunity that Colonel Anderson

has given me, with a challenge that I am seeking here to re-fight the war. I am not. My examination of this witness is directed solely to showing his interest, to showing his German connection, to showing that he is the one behind this litigation—as I shall show.

When I said in my opening that there was an invisible plaintiff here, he is no longer invisible, sir. And when the Government comes here and asks your Honor to upset the solemn act of the President of the United States, upon the testimony of a witness like that, can we be estopped from showing to the Court every German act and every German connection that this man has? to show that he is today the representative of the Germans? to show that he is here; so that if your Honor should enter a decree that these patents should go back to the Germans, am I to be estopped from showing that within a year he has been in consultation with the Germans, telling them that he will get these patents back, and discussing with them what should become of them?

MR. ANDERSON: Are you through?

MR. KRESEL: Yes.

MR. ANDERSON: If your Honor please, I think counsel has gotten abnormally excited—

MR. KRESEL: Abnormally what?

MR. ANDERSON: —upon the question. If he had asked a question which had any relation whatever to showing the things which he has suggested, outside of the pre-war association, I should not have objected, except for this reason:

I shall object here in the Court in the performance of my duties as I object now to the suggestion of counsel. I read to your Honor at the opening of this case a direction by the President of the United States to bring this suit, and it is

brought by the Attorney-General of the United States, its highest law officer, in the name of the Government of the United States. I first deny in the most emphatic terms that I can put upon the record, that there is an invisible plaintiff in this case, or any other kind of plaintiff, except the Government of the United States—and I am not sure that in making that statement, I am not, to some extent, adding a certain quality of dignity to an attack upon the good faith of the President and Government of the United States which I should not give.

Now, I deny every statement with respect to any relationship of this witness to the bringing of this suit.

THE COURT: May I, Colonel Anderson, make this inquiry?

MR. ANDERSON: Yes, sir.

THE COURT: I take it that there is no suggestion or intimation on the part of Mr. Kresel towards questioning the bonafides of the act of the President of the United States. If so, and it is discovered, I will take care of that situation.

MR. ANDERSON: I feel sure that is true, but—

THE COURT: But I fail to see just the basis for your apparent criticism of the act, because, as I understand your position, you are here to challenge the acts of the President of the United States on the ground, not that he was acting in bonafides—

MR. ANDERSON: Certainly not.

THE COURT: —but on the ground that he was misinformed, and that he acted without sufficient information, or under misinformation or erroneous information. Do I state your position correctly, Colonel Anderson?

MR. ANDERSON: I think substantially you state the position; that is, part of it.

THE COURT: Then as I understand Mr. Kresel, his argument is to the effect that one President of the United States has possibly acted in the same manner in which you charge another President of the United States acted. Am I correct, Mr. Kresel?

MR. KRESEL: Yes, your Honor. I want to say here, because—

MR. ANDERSON: Allow me your, Honor—This is quite a delicate matter and I do not want to take up the time—

MR. KRESEL: May I answer the Court's question, Colonel, and then you shall be heard?

MR. ANDERSON: Certainly.

MR. KRESEL: I do not want to be understood as in the slightest degree either directly or indirectly reflecting upon the good faith or the proper motives of the President, the Attorney General, or any of the gentlemen here concerned, who are trying this case.

But I do say—and I say we shall prove it—that this litigation was instigated by this witness and those whom he represents, and that such representations were made to the Government as to have led the Government to take this step which it has taken. In that respect, as your Honor has very well pointed out, the situation is no different from what the Government claims was the situation when President Wilson confirmed the act which they are now here attacking, or when the Alien Property Custodian conveyed the properties, which conveyance they are now here attacking.

I do not want to be understood as in any way reflecting upon the Government. I made that statement at the outset of the case. I recall upon

the first occasion when we appeared before your Honor, when Dr. Holderman was being examined here, the Government counsel thought that there was claim being made that this action was not being prosecuted in good faith by the Government, and we disclaimed any such claim. But we do say that we have a right to show, as we shall show, who it is that is responsible for getting the Government to bring this suit, and what their motives are—not what the Government's motives are.

MR. ANDERSON: Now, may I reply, if your Honor please?

I regard this matter as one of great delicacy.

If it were regarding myself as member of this Bar, I should not take up your Honor's time to make any statement at all. But in view of the fact that it is in regard to the actions of two Presidents of the United States and of the high officers of the Government, I think it is proper —and I may be mistaken, but I deem it almost essential—that I should make a brief statement in reply to what counsel has said, if your Honor will indulge me.

I am very glad to have the statement of counsel that he does not for a moment question either the purpose or the good faith of the Government of the United States at any stage, or of the President or Attorney General. So far as the counsel in this case are concerned, they are obeying the orders of their superiors and conducting the case in accordance with those instructions.

But, in the first place, the question asked had absolutely no relation to the subject under discussion here. It was brought in by counsel, and the very able counsel for the defendant here, with his ability in the choice and use of language, certainly was most unfortunate in the choice of

such language if he did not intend his former statement to this Court, made with some excitement, to be a reflection upon the motives and purposes of the Government.

THE COURT: Colonel Anderson, I shall not let you proceed on that theory or on that discussion, because that has been developed by counsel openly and fully, and that is a closed matter.

MR. ANDERSON: Certainly, I recognize that; but I am explaining why I brought the challenge.

I accept his statement fully on behalf of the Government; but I want to say, in the first place, that we are attacking here the legality of an act. We are attacking it with a respect for the hight officers concerned in that act, which, if I have not made clear, I desire to make clear.

But the right to attack the legality of an act is not only a right, but a duty of the Government of the United States, representing all the people, no matter how high the officer is, in the Courts, in an orderly and in a proper way. On the other hand, the legality of the act of bringing this suit can not be asailed except on one ground of improper motive.

THE COURT: There is no question about that, Colonel Anderson.

MR. ANDERSON: Therefore, what possible relation can that have to the bringing of this suit, except by that method? It can not affect the issues in this case. It can not affect the legality, except in the effort to prove what counsel have already stated that there was an invisible plaintiff. Therefore, the position of the Government here in raising a strictly legal question—an absolutely legal question—as to an act of the officers of the Government, and on legal grounds, declaring that confidence in good faith and motive at the very out

set and throughout this Bill, carefully drawn with that end in view, is one thing; but an attack on the legality of the President's action in directing this suit, or that of any one else, is another thing and, therefore, it can have no bearing upon this issue.

THE COURT: The testimony is not offered on that ground, and the only reason for the discussion of that point, Colonel Anderson, as I understand it, was your remark challenging the propriety of any person questioning the act of the President when directing the bringing of this suit; and that involved, it seemed to me, an understanding on my part of just what was being discussed by counsel for the respective sides, and I asked you each if I stated correctly your views, approximately, and you said yes.

MR. ANDERSON: I said, as far as you went.

THE COURT: Yes. Now then, we have come back to a legal basis, if I understand you, and that is a closed transaction—a closed incident.

MR. ANDERSON: Certainly.

THE COURT: Now we are back to the question, are we not? Let us have the question read.

(XQ. 470 repeated as above recorded.)

THE COURT: I think, Colonel Anderson that the limitation of discretion is exceedingly broad in cross-examination with respect to the prior activities and views of the witness pertaining to the chemical or dye industry in any way, because we cannot stop with one factor or factors and get a clear and comprehensive idea of the witness's mental attitude towards the matters with respect to which he is testifying. He has placed values upon the patents and trademarks. What the value really is, I should assume, in the absence of information to the contrary, depends in large meas-

ure upon the situation and condition and status of the chemical science and the dye science of this country at the time of the sale in 1919. So that I take it that this question is not without its bearing or relevancy to both of those reasons for inquiry. I therefore overrule your objection and note for you an exception.

MR. ANDERSON: All right, sir. I will call your Honor's attention only to the fact that this question relates to what happened long before 1919.

THE COURT: But is that not disclosing a condition of fact which has not been shown? I do not see how all these facts can be obtained or disclosed of record save by an inquiry covering a reasonable period of time prior to May, 1919.

Now, then, is there a thought in your mind, Colonel Anderson, that this inquiry is entirely wrong under any circumstances, regardless of the date?

MR. ANDERSON: This is with regard to the taking out of patents prior to the war. Now, if your Honor will permit me to read this paragraph:

> "They took advantage of our patent laws, which gave them a right to patent anything here, and we could do the same thing in Germany. Now, if the patent laws were at fault, you cannot blame them for taking advantage of them. They patented every thing in sight, which was perfectly right, so as to protect themselves."

THE COURT: I wonder if there is not this difficulty in the way of your considering that matter in the way that it seems to me it should be considered. We are not dealing with facts as facts independently of this witness. We will assume his testimony goes to the value of the patents.

Now, must not those matters all be brought to the mind of the witness in order to determine whether, in view of all those facts which existed prior to 1919, were taken into consideration by him in placing his estimate of value on the patents?

MR. ANDERSON: If your Honor asks the question, I will answer in just a few words that if any one can possibly connect the question of the value of these patents, all of which have been seized by the Alien Property Custodian in 1919, with the fact that the Germans took out the patents freely as provided by the Patent Law in 1913 or 1914—if there can be any connection between that value and the fact that these patents have been taken out freely, I would admit that there might be very intangible connection that might be established.

But I am frank to say that I probably can not understand it and therefore I did not want to get into a discussion of the matter. Your Honor will of course relieve me of that position. I only got up to renew my objection because it was a new subject, but we unfortunately got into a rather extended discussion.

THE COURT: I thank you, Colonel Anderson. I think the question is admissible. The weight of the answer is purely another matter.

MR. ANDERSON: I wanted to make the statement that I would like to have that objection considered as made to each question and answer on this line of examination, as before, with an exception.

THE COURT: Very well. All questions are objected to with an exception noted to the taking of the answer.

XQ. 471. The question is, Mr. Metz, whether you testified as I read to you?

A. I do not recall what you read, Mr. Kresel. Will you repeat it?

XQ. 472. I do not want to repeat it over again, but it is this paragraph that I show you.

A. Yes, sir, that is correct.

XQ. 473. And that was true?

A. That was true.

XQ. 474. And with the exception of the Bayer plant up in Rensselaer, near Albany, N. Y., the Germans did not manufacture here?

A. Not so far as I know at that time.

XQ. 475. And even that plant manufactured with imported raw materials from Germany?

A. Some things.

XQ. 476. I read to you from page 865 of your testimony before this Committee on the Judiciary, as follows:

> "MR. GARVAN: Just assume for a moment that Germany wanted to sacrifice some money to regain control of the world market.
>
> "THE CHAIRMAN: (Interrupting) That is what I was asking Mr. Metz a moment ago, and he, I think, answered it: They could depress the price so as to defeat the object we have in view.
>
> "MR. METZ: Yes.
>
> "MR. GARVAN: They would only have to raise their price in countries that do not manufacture it.
>
> "MR. METZ: Yes, certainly."

That was true, was it not?

A. That was true, undoubtedly.

XQ. 477. Prior to the war, did not the Germans to your knowledge use what is known and what you have described in your testimony, as I shall read in a minute, "full line forcing"?

A. Not the concern I was—

XQ. 478. Wait a minute. I had not finished my question.

A. All right.

XQ. 479. —by means of which to maintain their dye and pharmaceutical monopoly in the United States?

A. Never to my knowledge.

XQ. 480. Well, do you mean by that that they never tried it on you?

A. I never tried it with my customers.

XQ. 481. I didn't ask you that.

A. That is all I can answer. They didn't sell them. I sold them.

XQ. 482. Don't you know that the German factories that were represented here did that?

A. Not to my knowledge.

XQ. 483. What is full line forcing?

A. I understand it to be a system of pressure that you must buy of them to get a thing you want, probably.

XQ. 484. In other words, that the Germans declined to sell to a consumer any particular dye or color that he wanted unless he would buy all the colors and all the dyes that he needed; was that your understanding?

A. There was no German selling here, Mr. Metz—

MR. ANDERSON: One moment. The witness did not testify to that.

MR. KRESEL: I was asking him.

MR. ANDERSON: You did not summarize the witness's testimony. The witness has testified that he did not know of any such practice of his knowledge, and therefore when Mr. Kresel says the Germans did this, he is putting in the mouth of the witness something he did not say.

MR. KRESEL: I beg your pardon, Colonel. I think if you will bear in mind what I asked him before, you will see that the question is proper.

THE COURT: Will you repeat the last two or three questions, Mr. Stenographer.

(Repeated as recorded above).

THE COURT: There is injected into that question, I think, Mr. Kresel, an inference or implication, should he answer it, that the Germans did engage in that practice. I thought the question was the abstract one as to whether that was his understanding of full line forcing.

MR. KRESEL: May I withdraw the question?

THE COURT: Yes.

MR. KRESEL: I do not think it has been answered; so no harm has been done.

XQ. 485. Your understanding of the practice was that the Germans would decline to sell any particular color unless the customer would buy all of its colors from them?

A. I did not say so.

XQ. 486. I am asking you whether that is your understanding?

A. My understanding of full line forcing; not what the Germans did.

THE COURT: I will protect you, Mr. Metz, if you will take care of yourself.

THE WITNESS: I thank your Honor.

MR. ANDERSON: I submit, if your Honor please, that even with the particular latitude on cross-examination when you undertake to summarize the testimony of the witness, you can not put words in his mouth.

THE COURT: I understand your contention and I think your objection is well taken to this question.

MR. KRESEL: Well, I will try again.

XQ. 487. Will you tell me again what your understanding was of full line forcing?

A. My understanding of full line forcing is that a

concern would compel a competitor or consumer or customer to buy everything from him in order to let him have a certain thing that he wanted, a certain product that he really needed. That would be full line forcing in my opinion.

XQ. 488. And did the Germans indulge in the practice called "dumping"?

A. I never heard of it.

XQ. 489. Never heard of that either?

A. No, sir. My people never did and I didn't.

XQ. 490. Tell us, please, what you understand by the word "dumping"?

A. By the word "dumping," I understand, selling goods below the cost of production for the sake of getting a market somewheres as against home manufacturers.

XQ. 491. And did the Germans resort to the bribery of dyers?

A. Not to my knowledge. The Germans never did. Their agents here may have.

XQ. 492. Did you?

A. No, sir; I did not.

XQ. 493. You were sued, were you not, in the State of Pennsylvania under the Sherman Anti-Trust Act and the allegation was made against you that you had indulged in bribing the dyers of the plaintiff to use your colors in preference to anybody else's?

A. That did not make it so.

XQ. 494. I did not ask you whether it made it so. You were sued, were you not.

A. There was such a suit.

XQ. 495. And you settled that suit by paying $40,000, did you not?

A. Settled the suit on the basis of a compromise with the people who sued.

XQ. 496. $40,000?

A. I can explain the reason for it. It is in the record.

XQ. 497. $40,000?

A. Yes, sir.

XQ. 498. I show you a letter printed at page 509 of the Committee on Finance of the United States Senate, dated at Hochst-am-Main, March 30, 1914 from Dr. Haeuser to you and ask you whether that is a copy of the letter you received.

A. Yes, sir, it is.

XQ. 499. I also show you a letter printed at page 677 of the hearings before the Committee on Ways and Means, a letter from Dr. Haeuser to Mr. Metz, dated July 31, 1913 and ask you whether that is a copy of a letter you received?

A. Which date is this, Mr. Kresel?

XQ. 500. July 31, 1913?

A. Yes, that is the letter.

MR. KRESEL: I am simply having the witness identify these, your Honor, and when I am through with him, I will offer them in bulk and not stop here to offer them.

XQ. 501. Salvarsan was discovered by Professor Ehrlich in Germany, was it not?

A. Yes, sir.

XQ. 502. And he discovered it in the dye factory of the Farbwerke-Hoechst people?

A. No, sir; he did not discover it in the dye factory. He discovered it in his own laboratory in the Speyer House in Frankfort. He worked in connection with the dye factory. They furnished the materials.

XQ. 503. The technical name of the drug is arsphenamine?

A. No, sir; that is a name coined here. The technical name is diaminodioxyareenobenzol—or benzene.

XQ. 504. Do you mean that the word arsphenamine is an American designation?

A. It is an American designation adopted here after the license was granted.

XQ. 505. The product is sometimes known as 606?

A. That was the original name before they gave it a trade name.

XQ. 506. And in 1911, the German Farbwerke-Hoechst Company took out United States letters patent covering that product?

A. I think that is the date.

XQ. 507. The date will be shown on the patent?

A. It will be shown by the patent, yes.

XQ. 508. When the war came on did you have any of that preparation on hand?

A. I had some stock.

XQ. 509. I mean when the European War broke out?

A. Yes.

XQ. 510. In August, 1914?

A. Yes, I had some.

XQ. 511. The United States Army was a very large user of that drug, was it not?

A. Not at that time.

XQ. 512. I mean when we went into the war?

A. Oh, yes, supplied in very large quantities.

XQ. 513. Indeed, as early as September, 1915, long before we went into the war, do you not recall that the United States Government was seeking to obtain salvarsan from you?

A. Yes, certainly.

XQ. 514. And that you could not supply it?

A. I didn't have any of it to give them any more and they had to get it from abroad and got it.

XQ. 515. You told them you could not supply it?

A. I did not have any stock probably at the time: I do not remember the details of how much I had.

XQ. 516. And is it not the fact that Germany in

1915. and 1916 refused to ship any salvarsan to the United States unless you distributed it?

A. I do not know as that is true. Possibly that is so, but I always did distribute when they were willing to ship. I know that.

XQ. 517. I mean, they insisted that you should be the only one to distribute?

A. I had a contract. They could not do anything else. I would hold them to it.

XQ. 518. I am asking you whether that is a fact that they insisted that as a condition of their shipping salvarsan to the United States, you must do the distributing?

A. If I recall, there was a condition that the Red Cross should have a hand in distributing it, so it would not be exported; only for our own use here. I think that was the condition in 1915 or '16, Mr. Kresel. The records will show that.

XQ. 517. I show you a letter from Charles A. Holder, the foreign trade adviser of the State Department directed to you. Did you receive that?

A. I assume so. Let me read it.

XQ. 518. Page 779 of the Shortridge Committee report?

A. That is right. That is the letter with the Red Cross. That is right.

XQ. 519. Now I will read this letter to you. This is directed to you, Herman A. Metz:

> "German Government informs Department of willingness to permit first shipment of 150,000 ampules salvarsan subject to the following conditions: 'Distribution to be effected by American representatives of Farbwerke-Hoechst' "—

That was you?

A. Yes, that is right.

XQ. 520. "Under supervision of American Red

Cross and American Government, to guarantee safe arrival." That is correct?

A. Yes, sir; that is correct.

XQ. 521. Did you not cable the Farbwerke-Hoechst Company in February 9, 1916 as follows: "State Department informs me permit for export of 150,000 ampules subject to guarantee safe arrival and Red Cross supervision distribution. American Red Cross entirely unofficial body; supervision unnecessary and impossible. Will personally guarantee proper distribution. The permit now in Rotterdam; absolute guarantee of safe arrival. Spurious and infringing products simply flooding this market during delay. Inform American Embassy, Berlin."

Did you so cable?

A. Yes, if it is there I did.

XQ. 522. The American Red Cross had nothing to do with the distribution?

A. No.

XQ. 523. It did not?

A. The American Red Cross refused to have anything to do with it.

XQ. 524. So you did the distribution?

A. Naturally, I was the agent for it.

XQ. 525. You were the distributor?

A. Yes.

XQ. 526. What did you sell salvarsan at in August, 1914, before the European War broke out?

A. I think the best wholesale price was $2.50 to the wholesaler and about $3.50 to the physician. As I remember the figures, that is about what it was, in large quantities.

XQ. 527. You came here to testify as an expert on values. You must certainly have armed yourself with your figures. You cannot tell me without guessing what you were selling that product for just before the outbreak of the war?

A. I told you $2.50 to the wholesaler.

XQ. 528. And how much to the retailer?

A. The retailer, I don't know what he sold it for. He sold it to the physicians. I did not sell it to the physicians at that time, only to the wholesaler.

XQ. 529. In other words, your testimony is that prior to the outbreak of the European War in August, 1914, you never sold to physicians direct, you sold only to wholesalers?

A. Oh, I won't say that, Mr. Kresel. There might have been an odd lot that a man came in to get; but that was not the usual course of business.

XQ. 530. I will amend my question, then. You said you did not as a rule sell to physicians direct, you sold only to wholesalers?

A. Mostly to wholesalers.

XQ. And the price you charged wholesalers was $2.50?

A. Yes, sir.

XQ. 532. An ampule?

A. Six-tenths of a grain.

XQ. 533. What were you paying the Germans for it?

A. I was paying 10 marks less 40 per cent. The German price was 10 marks to the consumer. It is $2.40 approximately to the individual.

XQ. 534. You were paying 10 marks less 40 per cent.

A. 6 marks net, and paid duty on that and charges.

XQ. 535. Did you pay the duty?

A. Certainly.

XQ. 536. That is, you paid the duty in addition to the 6 marks?

A. Certainly, and the charges, the insurance and the expense.

XQ. 537. How much was the duty?

A. I think it was either 25 or 30 per cent at that

time. The record will show. I do not recall, under the tariff.

XQ. 538. 25 per cent?

A. 25 or 30 per cent.

XQ. 539. Ad valorem?

A. Yes, that was the duty, I am quite sure, 25 or 30.

XQ. 540. How much did an ampule cost you net after paying the duty and such other expenses as you have mentioned?

A. It cost me $1.50 plus 30 per cent., which would be about 50 cents, we will call it offhand. About $2, I should say.

XQ. 541. So you say now that you made a net profit of fifty cents on each ampule that you sold prior to August 1, 1914?

A. Approximately, yes, that is true. About 20 per cent of the selling price.

XQ. 542. In other words, after charging up all expenses, the cost of the product, your overhead, the duties, freight, insurance, everything that you can think of, it still left you a net profit of fifty cents an ampule?

A. With this proviso, that I believe at that time the overhead was charged back to the other side, that they allowed us for overhead and for advertising at that time. I think in 1914 they did that, or before 1914. Later on we paid it all ourselves.

XQ. 543. I want you to try and think a little more closely and tell me definitely whether prior to August 1, 1914, you had to pay the overhead here?

A. I cannot say that definitely. I paid part of it, I think, as I recall it. We charged some expense back to the other side. They had made us a certain allowance for advertising purposes.

XQ. 544. How much of an allowance?

A. That I do not recall exactly. My attention is

called to that by the fact that our expenses jumped suddenly in one year over a previous year. The books showed all that. The Custodian had all that when he examined my books.

MR. KRESEL: I ask that the statement that the books showed all that and that somebody, whose name I did not catch, examined the books, go out.

THE COURT: Let the answer be read and the part of it you object to be stricken out. Read the answer.

(Answer to XQ. 544 read as above recorded).

THE COURT: The last sentence, Mr. Kresel, was the one you wanted out, or what portion?

MR. KRESEL: I want out what he said about the Custodian examining his books.

THE COURT: Strike out that last statement.

XQ. 545. Between August 1, 1914, and April, 1915, during which you testified you were still getting some salvarsan from Germany, did you have to pay any more for that product to the Germans?

A. I think so. They raised it from time to time, ten per cent. at a time, I think.

XQ. 546. Your books are available?

A. The old books? I don't know. That was the Farbwerke-Hoechst at that time. That was—

XQ. 547. No, no, you have answered my question. You undertook to give us figures this morning—

A. I will give them to you.

XQ. 547. (Continued) Way back to 1913, do you remember?

A. I have got them right here.

XQ. 548. I want to see the books from which you got those figures.

A. All right.

XQ. 549. Will you produce them on Monday?

A. I think the ledgers are in town now.

XQ. 550. All right, those books will show whether

you had to pay more to the Germans for that product between August, 1914, and April, 1915, than you paid before August?

A. I know I did, whether the books show it or not.

XQ. 551. You do not mean to say that your books will not truthfully—

A. I do not.

XQ. 552. Let me finish my question, please.

A. Go ahead.

XQ. 553. You do not mean to say that your books will not truthfully reflect the situation?

A. I do not know whether those books, the ledgers, show that. The purchase books would and I have not those.

XQ. 554. You have some books that will show it?

A. I may have; I don't know.

XQ. 555. Those are the books I want to see.

A. I may have them. They are ten years old and I have not kept some of them, but some of them are in the files. But I know the facts.

XQ. 556. Where did you get the figures from that you quoted this morning in your testimony, wherein you showed what profits you had?

A. From my records, compiled from the books which I keep.

XQ. 557. How can you get your profits if you do not know your cost?

A. Because I kept them all the time, kept those records all the time.

XQ. 558. Those are the records I want.

A. All right, you can get those. They are on balance sheets and things of that sort.

XQ. 559. But I do not want the sheets, I want the books.

A. I have not got the books, but I have the sheets that I took from the books.

XQ. 560. We have it, then, that your books of account showing your transactions with the Germans between August, 1914, and April, 1915, are no longer in existence?

A. I won't say that. They may be; I do not know.

XQ. 561. Will you produce them on Monday?

A. I will try to have them here by Monday. I don't know, how can I get them here Monday. I can not get into the office Sunday and the office is closed today. I will have them here Tuesday. There is no physical way of getting them here Monday, Mr. Kresel.

XQ. 562. I am going to take your recollection until you produce the books, and I want your recollection as to how much more you had to pay the Germans for salvarsan after August, 1914, than you did pay prior to that date?

A. If I remember correctly it was 10 per cent. increase in price, with an increase in insurance and freight rates.

XQ. 563. You see, that does not tell me what I want to know. I want to know the amount of money.

A. I have to get that from the books, Mr. Kresel.

XQ. 564. Can't you tell me?

A. I do not keep with me a record of my books for thirteen years.

XQ. 565. Approximately?

A. No, I could not tell you within any amount. I can tell you by my records what the stuff cost at that time, and ten per cent could be added, and then you would have the figures.

XQ. 566. You said that the stuff cost you two dollars, approximately.

A. I got that right here.

XQ. 567. Then you add ten per cent and that would make it $2.20?

A. Yes, $2.20 later on.

XQ. 568. How much did you charge the War Department for salvarsan?

A. I think I charged them the cost price, $2.50, something of that kind, or $2.20, and offered them the plant when I started working it.

XQ. 569. Did you not charge them $4.50 an ampule?

A. I do not think I did, except possibly towards the end, when they had none at all and everybody paid that.

XQ. 570. You see, I did not ask you as to what the condition was; I asked you how much you charged the War Department. Now, did you not charge them $4.50?

A. I do not know, unless you give me the dates and the invoice. I will tell you then.

XQ. 571. Now I read to you a letter from W. C. Gorgas, Surgeon General of the United States, dated April 25, 1917—which you see was shortly after we went into the war.

A. What date?

XQ. 572. April 25, 1917. This will be found in the Congressional Record at page 4849, under date of July 9, 1917.

MR. ANDERSON: One moment, Mr. Kresel. Let me get that clear, will you? You mean in the Congressional Record of debates in Congress?

MR. KRESEL: Yes.

MR. ANDERSON: Have you got the record here?

MR. KRESEL: We probably have it. I have a photostat of it. Do you want me to produce the original?

MR. ANDERSON: No, the only thing is that I want to be sure where it is so that I can follow it.

MR. KRESEL: I am giving it to you.

MR. ANDERSON: You see, I have not got the Congressional Record.

MR. KRESEL: I will produce to you the original. I think we have it.

MR. ANDERSON: I am perfectly willing to take your photostat or a copy, but I wanted to get something that I could compare with myself, look at it.

MR. KRESEL: This letter is headed "War Department, Washington, April 25, 1917," and it is addressed to Honorable Henry W. Wilson, House of Representatives, Washington, D. C.

MR. ANDERSON: I do not think that would be admissible.

THE COURT: No, Colonel Anderson wants to know where in the Congressional Record he may find it, the proceedings of what date or what volume.

MR. KRESEL: I have given him the date, your Honor, July 9, 1917, page 4849 of the Congressional Record.

MR. ANDERSON: Then I would note the further objection, if your Honor please, that it does not appear that this letter was addressed to the witness or that he ever heard of it, and therefore the counsel can ask him any question as to any matter contained in the letter but I do not know quite on what principle the letter can be put into the record, and therefore I shall have to object to the letter going into the record as not being a matter with which this witness has any concern.

MR. KRESEL: I shall connect it, your Honor, with this witness, and if the Colonel wants me to ask him about it preliminarily, I will.

THE COURT: But I do not recall at the moment what your question is. Will you state it, please?

MR. KRESEL: I asked him how much he had charged the Government for this arsphenamine or whatever it was.

THE COURT: There having been an objection

by Colonel Anderson to the reading of the letter, at this stage of the inquiry I think the objection is well taken.

MR. ANDERSON: I make that objection because I have never seen the letter and therefore I could not consent to it going into the record.

MR. KRESEL: I am not offering it in the record. Perhaps Colonel Anderson misunderstands me. I do not think he would want to object to this. I am reading it to ask this witness whether that does not refresh his recollection as to the date when he charged the Government $4.50 for his property.

MR. ANDERSON: If counsel reads it, it necessarily goes into the record. I object to the letter being read into the record because, if the witness had written the letter or it was addressed to him, it would be a subject for refreshing his recollection, but a letter between General Gorgas and a member of a committee of Congress certainly has nothing to do with the recollection of this witness.

MR. KRESEL: I will offer it in a minute again. Let me ask him another question.

XQ. 573. You appeared before a committee of Congress which was headed by Honorable Henry W. Watson, that was considering the enactment of the Trading with the Enemy Act?

A. I did. The Trading with the Enemy Act?

XQ. 574. Yes.

A. I do not think Watson headed that.

XQ. 575. Then what was it?

A. Watson headed the Finance Committee on the tariff hearings.

XQ. 576. When?

A. You can go to the hearings of Congress. You have the records.

XQ. 577. 1917.

A. That was not Watson, to my knowledge, who was the Chairman of that meeting. I remember that committee. The Committee on Judiciary, I think it was, of the Senate.

XQ. 578. But you appeared before Mr. Watson's Committee, did you not?

A. I do not think Watson was Chairman of that Committee.

XQ. 579. Did you not write a letter to Mr. Watson?

A. I do not recall, unless you have it in the record. I wrote several on dyestuffs.

XQ. 580. You do not recall anything but what I show you here, do you?

A. I do. I recall everything that I know without your showing it to me.

XQ. 581. Do you not recall writing to Representative Watson protesting——

A. Oh, Representative Watson? I thought you said Senator Watson.

XQ. 582. I did not say Senator Watson; I purposely refrained from saying that. Now we will get it straight.

A. You mean Watson of Pennsylvania?

XQ. 583. That I am not aware of—where he comes from. Henry W. Watson, in the House of Representatives.

A. Not the Senate.

XQ. 584. You remember writing Watson?

A. Yes, I had a communication with him.

XQ. 585. You remember writing him in connection with these salvarsan patents?

A. Regarding a bill he had about the abrogation of the patents.

XQ. 586. You wrote him?

A. I did, sure.

XQ. 587. And you appeared before his committee, did you not?

A. I do not think so.

XQ. 588. Did you not testify before his committee?

A. I testified before the Senate Committee, not before the House Committee, as I remember it.

XQ. 589. But it was with reference to this legislation?

A. No, I appeared before the Senate Committee on the Alien Enemy Act. I do not believe the House had any hearing at that time.

XQ. 590. Do you not remember appearing before the Committee on Interstate and Foreign Commerce of the House of Representatives May 11, 1917?

A. I do not recall, but I would be glad to look at the record and see. I appeared so many times before Congress.

XQ. 591. And did you not address a letter to Honorable Charles Warren in the matter of the German patents (handing witness paper)?

A. I should not be at all surprised. I do not know that I appeared there, though. I do not know that I appeared. Let me see. ((Examines paper). Yes, I recall that. Mr. Warren was in charge of the hearings on the Trading with the Enemy Act. I recall that.

XQ. 592. And did you not appear before the subcommittee of the Committee on Commerce of the Senate?

A. Yes, certainly, that is what I am talking about.

XQ. 593. With reference to this same legislation?

A. Yes, but not the House.

XQ. 594. At the time when Congress had under investigation the question of what to do with these German patents you were interested in the salvarsan patent?

A. Certainly.

XQ. 595. And do you not remember that you were questioned as to the price at which you were selling the product?

A. Yes, I would assume so, naturally.

XQ. 596. And do you not remember that it was made to appear there that you were charging the Army of the United States $4.50 an ampule for this?

A. I was charging everybody $4.50 after the war started, because of the increased cost of getting it. Everybody paid $4.50, the highest ever charged.

MR. KRESEL: I ask your Honor to strike out after the words "I charged everybody $4.50."

THE COURT: Let it be stricken out. Mr. Kresel does not want your reasons.

THE WITNESS: I beg your pardon.

THE COURT: If he does he will ask you for them. Just answer his question as directly as you can.

THE WITNESS: I will keep within bounds.

XQ. 597. You had access to these salvarsan patents from the day they were taken out, did you not?

A. Certainly. Every chemist had.

XQ. 598. You had?

A. I had.

XQ. 599. You could read them; they were in English?

A. Yes.

XQ. 600. You had a brother who was a chemist?

A. Yes.

XQ. 601. I assume a very good chemist?

A. Yes, I admit it.

XQ. 602. And he was in charge of your factory?

A. Yes.

XQ. 603. What is his name?

A. Gustav P., Ph.D.

XQ. 604. You sent him abroad in 1916, did you not?

A. Yes, sir; early in 1916.

XQ. 605. You sent him abroad to the Farbwerke-Hoechst Company at Hoechst am. Main to learn how to make salvarsan?

A. To see the process they were using so that we could manufacture it here; yes, sir.

XQ. 608. And he spent four months there, did he not?

A. About that.

XQ. 607. And when did he return?

A. About four months after he left. I think some time in May or June of the same year.

XQ. 608. May or June of 1917?

A. 1916.

XQ. 609. When did you first produce any salvarsan here in the United States?

A. At the end of 1916, I should say.

XQ. 610. Not what you should say; I want to know exactly.

A. To the best of my knowldge at the end of 1916 in the laboratory we produced it.

XQ. 611. I want to know the date when you first produced any salvarsan in the United States.

A. I have no doubt at the end of 1916 we were making sample lots right along and testing them out.

MR. KRESEL: May I have that stricken out, your Honor?

THE COURT: Yes.

MR. KRESEL: I am asking simply for a date.

THE COURT: Strike out the answer and the stenographer will read the question.

XQ. 612. (XQ. 611 repeated as recorded above).

A. I do not know the exact date.

THE COURT: Answer that as nearly as you can.

THE WITNESS: Towards the end of 1916 we had the product finished and ready for the market. I can not give the exact date, your Honor.

THE COURT: Is that what you want, Mr. Kresel?

MR. KRESEL: Yes, I will take that.

XQ. 613. Did you sell any salvarsan that you made in the United States, in 1916?

A. No, not until June, 1917.

XQ. 614. When did you first sell any salvarsan do not know offhand. Early in 1917.
that you made in the United States?

A. I can give you the records from my books. I

XQ. 615. Will you on Monday—

A. Not Monday.

XQ. 616. When you return here—please wait until I finish my question—be prepared to state from your books the date when you first sold any salvarsan that you made in the United States?

A. I can not on Monday, Mr. Kresel. I can not get the books. Tomorrow is Sunday and I do not know how to get at them. I will do it on Tuesday, if you will give until Tuesday.

XQ. 617. Before you sold or produced any salvarsan in the United States there was somebody else that produced it?

A. Yes, sir.

XQ. 618. Who was that?

A. That was the Dermatological Research Laboratories in Philadelphia, whose product I sold—bought and sold.

MR. KRESEL: I ask that the words "whose product I bought and sold" be stricken out.

THE COURT: It will be stricken out.

XQ. 619. When to your knowledge did the Dermatological Institute first produce and sell this product in the United States?

A. The latter part of 1915 or the beginning of 1916. The latter part of 1915, I should say.

XQ. 620. When you learned that they were producing this product did you not notify them that they were infringing your patents?

A. Probably—in 1915.

XQ. 621. Are you guessing at that?

A. No, I am quite sure I told them.

XQ. 622. All right, then please do not say probably. And did you not threaten them with prosecution for infringing your patent?

A. I do not think I did, no. I made an agreement with them by which I sold their product.

MR. KRESEL: I ask that everything after "I do not think I did" be stricken out.

THE COURT: He said no. Let that stay, but strike out the remainder.

XQ. 623. Did you not finally say to them that you will permit them to go on and manufacture the product only so long as you could not get it from Germany?

A. They agreed to do that.

THE COURT: Mr. Metz, you will have to answer those questions. I do not believe that you are intentionally evading.

THE WITNESS: I am not, your Honor.

THE COURT: No, I do not think you are.

THE WTNESS: I can not recall the exact conversations.

THE COURT: Let the answer be stricken out, and repeat the question.

XQ. 624. (XQ. 623 repeated as above recorded).

A. There was an agreement made to that effect.

THE COURT: Strike out the answer. You will have to answer that, Mr. Metz.

THE WITNESS: Well, I suppose I did, yes. Probably, yes.

THE COURT: Now, Mr. Metz, you are not supposing, understand.

THE WITNESS: Well, I did, then, your Honor —put it that way—because I got the agreement here.

THE COURT: Answer these questions as directly and specifically as you can, and I am going to watch your answers. Proceed, Mr. Kresel.

MR. KRESEL: I should like to proceed, your Honor, but I am anxious to catch a train at 3:30 if your Honor will so far indulge me.

THE COURT: The time is up, I did not realize it. We will adjourn court until Monday morning at 8:30 o'clock Standard time.

(Whereupon at 3:05 o'clock P. M. Standard time, adjournment was taken until Monday, June 25, 1923, at 8:30 o'clock A. M. Standard time.)

(CONTINUATION OF TESTIMONY ON JUNE 25, 1923)

HERMAN A. METZ resumes the stand.

CROSS-EXAMINATION.

By MR. KRESEL (Continued):

XQ. 625: You said, among other things on Saturday last, that while you were the sole agent for the distribution and sale of salvarsan prior to 1914 in the United States, some did come in not through you. What did you mean by that—smuggled in?

A. Not necessarily smuggled, but infringing; that is, dealers bought it and brought it in, sold it here, infringing the patent, infringing my rights.

XQ. 626. At all events, since the last shipment by the Deutschland in November, 1916, you have not imported any salvarsan?

A. Since when?

XQ. 627. November, 1916.

A. Oh, I have imported since the Armistice, yes, one or two lots.

XQ. 628. What year?

A. I presume in 1922 some came in. I am not certain. I would have to go to my records—1921 or 1922.

XQ. 629. And those you imported having obtained them from the manufacturer, the Farbwerke-Hoechst Company in Germany?

A. Those that we imported came from there direct under the condition of the Public Health Service.

XQ. 630. Have you been importing any dyes recently?

A. Yes, sir.

XQ. 631. You are importing considerable, are you not?

A. Not just now. We had all we could get orders for.

XQ. 632. When was the last importation that you received of dyes?

A. They are coming right along from unoccupied Germany.

XQ. 633. You are importing right now?

A. If I can get orders and they can be shipped, yes. I have orders there now.

XQ. 634. In 1919 were you importing any dyes or salvarsan?

A. 1919? No, that was—we probably were at peace; could not.

XQ. 635. At that time the importing business was dead, was it not?

A. Practically, except from Switzerland and other countries. From Germany it was dead.

XQ. 636. Prior to the outbreak of the European war there were six large dye factories in Germany, weren't there?

A. There were six plants known as "The Big Six." There were other plants, but there were six large ones. There were several smaller ones.

XQ. 637. You have always, when you have testified about them, called those the "Big Six"?

A. They were known as the Big Six.

XQ. 638. And those were the Badische, and the Bayer, and the Berlin; that was one group?

A. Yes, sir.

XQ. 639. And then there was another group of Hoechst and Cassella, and Kalle?

A. Yes, sir.

MR. ANDERSON: I simply want to make the statement on the record that if counsel takes the witness outside of the direct examination he makes him his own witness.

THE COURT: As I indicated on Saturday, I think any testimony with respect to the German dye or chemical industry is relevant to the question of value.

XQ. 640. And as you have stated, in 1916 there was a combination in Germany of these six and several others into what is known as the Interessen Gemeinschaft?

A. I have no personal knowledge of such fact, except through the matters in the record put there by Mr. Choate mainly. I have no personal knowledge of such matters—at that time.

XQ. 641. Have you now?

A. Yes, I have been over there and found out since 1920.

XQ. 642. That that is a fact?

A. That it is a fact today, the Interessen Gemeinschaft is a combination of all the plants, which includes The Big Six.

XQ. 643. The Big Six and others?

A. And smaller ones that they have acquired.

XQ. 644. And that the combination was formed in 1916?

A. I do not know the date. I know it was under German law and I do not know the date.

XQ. 645. Under the German law?

A. I assume so from the records that have been put before Congress.

XQ. 646. But even before that time, and while you were still the representative here of the Farbwerke-Hoechst Company, territory and amount of sales that you could make as the agent of your company were regulated and divided abroad between your company and the other members of the Cartel, isn't that right?

A. On one or two products.

MR. ANDERSON: I assume that it is not necessary for me to renew my objection this morning.

THE COURT: Not at all. The objection will be understood to be running through all these questions.

XQ. 647. And that was particularly true of sales of indigo, for instance?

A. Yes, sir.

XQ. 648. In other words, you here as the representative of the Farbwerke-Hoechst Company of Germany were not permitted, according to the arrangement between Farbwerke-Hoechst Company of Germany and the other members of the Cartel to sell any more than a certain proportion of indigo here in the United States?

A. That is not true.

MR. ANDERSON: I object.

MR. KRESEL: He has answered "no."

MR. ANDERSON: I want to say with regard to any arrangement between those parties, without waiving my objection, that the evidence of that

arrangement would be written; and I will have to object to any testimony of an oral character as to an arrangement between the corporations or as to their organization, consolidation, or otherwise.

THE COURT: I think that objection is not well taken. You may take the answer, and an exception may be noted.

XQ. 649. You said "no, sir."

A. I said "no, sir," there was no such restriction.

XQ. 650. What was the restriction.

A. The restriction, as I understood it, that they exchanged abroad and my firm was allowed a certain per centage of the total sales, and Mr. Poucher's firm, the Badische, the other—the other two-thirds, and the thing was regulated abroad.

XQ. 651. Wasn't it that if you made a certain amount of sales over and above the amount allowed that your German principals had to make an allowance therefor to the Badische?

A. Yes, sir, that is what I said. I was not restricted. I could sell the whole business if I could; had no influence upon me personally, or my company.

XQ. 652. And your return on the sales of indigo, as an example here, were either increased or diminished in accordance with whether you sold more or less than the amount agreed upon between your principal and the others?

A. Mine were not, because I claim—

XQ. 653. Whose were?

A. I do not know. I had a profit on all I made by an arrangement with abroad.

XQ. 654. Did you not deduct from your returns that you made to your principals abroad, an allowance for an excess of sales made by you here?

A. I got it back from them over there.

XQ. 655. You got it back from them?

A. Yes, sir; that was a sort of extra account, part of the extra account that is mentioned in the agreement.

XQ. 656. I will come to the extras.

A. All right; that is the way it was.

XQ. 657. These dye factories abroad, in addition to turning out dyes, also turned out pharmaceuticals?

A. Some of them. The Hoechst people did.

XQ. 658. Among such pharmaceuticals you have testified were salvarsan and novocain. How about luminal?

A. That was the Bayer preparation. I know that.

XQ. 659. That is a dye factory?

A. That is a dye factory.

XQ. 660. And how about aspirin?

A. That is being made here by the Bayer plant in Albany, of which I have no personal knowledge except from the market reports.

XQ. 661. Last Saturday you testified that the Dermatological Institute late in 1915 started manufacturing this product which you are selling under the name of salvarsan?

A. A product which was sold for the same purpose.

XQ. 662. And a product that was just as efficacious?

A. Was said to be. I have no knowledge as to that. It was so considered by physicians in general. It differed somewhat from salvarsan.

XQ. 663. And when they started to manufacture it, you testified that you told them they were infringing your patents?

A. Probably.

XQ. 664. And when you speak of your patents, you mean these patents covering salvarsan as to which you undertook to give an estimate of the value last Saturday?

A. I didn't say my patents. I said *the* patents; the same patents under which I was a beneficiary in this country.

XQ. 665. You were the beneficiary of the patents in this country?

A. Yes.

By Mr. Anderson:

Q. 666. May I ask whether that arrangement was in writing?

A. I was the general agent for all their product.

Q. 667. I mean the arrangement between you and the Dermatological?

A. Yes, it was a signed contract and that is in the record.

The Court: Is it your understanding, Colonel Anderson, that cross-examination is limited to the disclosure of facts in writing and that the witness can not be asked to orally testify?

Mr. Anderson: As to any facts which are in a written document, the rule of the best evidence is exactly the same on cross that it is on direct. It must be the best evidence. The witness can not answer a question of knowledge without putting in the best evidence, if objection is made to the secondary.

Mr. Kresel: I am not asking him for the contents of the document or what the arrangement was. I am simply asking him what he said to the other people.

The Court: My understanding of that rule differs from yours, Colonel Anderson. You may be right. But I think cross-examination is not so restricted and the objection is also overruled on the ground that the contents of those documents is not now called for. Exception noted.

By Mr. Kresel:

XQ. 668. After telling them that they were infringing the patents of which you were the beneficiary in the United States, you told them that you would not interfere with their manufacture of this product as long as you could not get a supply from Germany?

A. Certainly, for the benefit of the physicians.

XQ. 669. Certainly. Please do not go on. Then you got a supply from Germany by the Deutschland?

A. No, sir. None came on the Deutschland.

XQ. 670. Well, in some other way?

A. Yes, some other way.

XQ. 671. And when you got a supply from Germany, did you not demand that the Dermatological Institute cease manufacturing it?

A. Under the agreement, probably, yes.

Mr. Kresel: May I have that answer stricken out, sir?

The Court: Let the answer be stricken out and the stenographer will repeat the question.

(XQ. 671 repeated as above recorded).

A. I notified them that I had a supply.

The Court: Let the answer be stricken out and the stenographer repeat the question.

A. Yes, sir.

The Court: You remember the caution of Saturday, Mr. Metz?

The Witness: Yes, sir.

The Court: I am not going to caution you any more.

XQ. 672. Did you also demand from them damages and an accounting for infringing the patents?

A. I do not recall that. I would have to refresh my memory.

XQ. 673. And did you not call upon them to dismantle their factory so that they could not make any more of that product?

A. I do not recall that either.

XQ. 674. On the 5th day of December, 1916, you made a written agreement with the Dermatological Institute, did you not?

A. I have the date.

XQ. 675. Have you that agreement?

A. I have a printed copy of it.

XQ. 676. Well, you introduced a copy of it before the Committee on Interstate and Foreign Commerce of the House of Representatives, 65th Congress. I now show you that copy beginning there (indicating) and ask you to state—

A. I want to get the date on this first.

XQ. 677. The date is on the following page, 5th day of December, 1916.

A. Is it the same one?

XQ. 678. Yes. Let me use my copy and you can follow me on your copy.

A. Yes, sir.

XQ. 679. I read from this agreement:

"Whereas Farbwerke, vormals Meister Lucius and Bruning, Hoechst on the Main (hereinafter designated for convenience and easy reference "The Foreign Corporation") is a foreign corporation duly organized and existing under the laws of Germany, Europe, and is the owner of, or the patentee, named in, certain patents of the United States, issued March 7, 1911, and November 11, 1913, and numbered 986,148 and 1,078,135, respectively, for a specific for syphilis, and process of making the same, which specific is known as diaminodioxyarsenobenzol, and when manufactured by or under instruction by The Foreign Corporation is known by the trade-mark 'Salvarsan' and '606' and 'Neosalvarsan;' and whereas Herman A. Metz"—that is yourself, is that right?

A. Yes, sir.

XQ. 680. "(hereinafter designated for convenience and easy reference 'Mr. Metz') is the President of Hoechst Company." Now, I will stop there. The Hoechst Company was the Farbwerke-Hoechst Company?

A. A New York corporation.

XQ. 681. "and represents that he is the sole owner of all of the capital stock issued by Hoechst Co. and that Hoechst Co. is a domestic corporation, duly organized and existing under the laws of the State of New York, and is solvent and has no indebtedness, and that The Foreign Corporation (that is the Farbwerke-Hoechst Company abroad) has assigned to Hoechst Company"—that is the New York corporation, is that right?

A. Yes, sir.

XQ. 682. "the sole and exclusive right of exploitation in the United States of America of salvarsan, and that Hoechst Co. is the sole licensee for the United States and Canada for salvarsan and for other modern medicinal preparations of The Foreign Corporation." Is that right? I want to stop there. That recital is true, is it not?

A. Yes, sir.

XQ. 683. The Farbwerke-Hoechst Company, a New York corporation, of which you were President, and all of whose stock you claimed to own, had therefore the sole and exclusive right of exploitation in the United States of America of salvarsan?

A. Yes, sir.

XQ. 684. And it continues to have that right to this very day?

A. Yes, sir.

XQ. 685. And this Hoechst Company was the sole licensee for the United States and Canada for salvarsan and for other modern medicinal preparations of

The Foreign Corporation; that was true when this contract was drawn?

A. Yes, sir.

XQ. 686. And is true to this day?

A. It is true as far as they control those products; yes.

XQ. 687. It was true in 1918?

A. Not after the seizure of the patents.

XQ. 688. It was true in 1918, was it not?

A. 1918, during the war?

XQ. 689. Yes?

A. All connections were broken at that time——

XQ. 690. I am not asking you about the legal construction. Did you and the Farbwerke-Hoechst Company abroad make any agreement in writing or otherwise which changed between you the status that you had occupied?

A. Not from 1914 on, after the World War started.

XQ. 691. That is all I ask.

A. Yes, sir.

XQ. 692. Now, you go on to recite in this agreement, "Whereas Mr. Metz and Hoechst Co. have requested The Laboratories"—that is the Dermatological Institute, is it not?

A. Yes, sir.

XQ. 693. "to discontinue the compounding and sale of arsenobenzol and to sell to their nominee about 12,000 ampules of arsenobenzol now held in stock by The Laboratories." That was true?

A. Yes, sir.

XQ. 694. In other words, on the 5th of December, 1916, you requested the Dermatological Institute to discontinue making that drug, and to sell whatever stock of it they had on hand?

A. Right; according to the agreement, yes. That was the arrangement arrived at.

XQ. 695. "And whereas," you say, "The Foreign Corporation and Hoechst Co. claim that the manufacture of arsenobenzol is an infringement of the said patents and other patents, recipes, and processes owned by them, and had demanded damages and an accounting of the profits arising from the sales of arsenobenzol, but which claim and the validity of which patents The Laboratories do not admit and which demand The Laboratories have refused." Was this true, that before making this agreement you did demand damages for infringement of the patents from The Laboratories?

A. Yes, sir.

XQ. 696. And I read on: "Whereas, at the request of Hoechst Co. and Mr. Metz, The Laboratories have dismantled that part of their laboratory which was constructed specially for the manufacture of arsenobenzol." Does that refresh your recollection as to your demanding that they dismantle their factory?

A. The matter was in agreement between their counsel and my counsel.

XQ. 697. Did you make that demand?

A. I would say yes, under the agreement, naturally, without anything specifically.

XQ. 698. I now read the paragraph marked 1, which says: "The Laboratories and Drs. Schamberg, Raiziss, and Kolmer shall not and will not, during the life, term, or non-suspension of said patents or either of them, either jointly, severally, individually, or directly or indirectly, except as hereinafter provided in paragraph 2, continue the compounding, preparation, or sale in the United States of America of arsenobenzol."

A. Yes, sir.

XQ. 699. That was the demand that you made upon the Dermatological Institute, namely, that they

must cease to make this product because your principal in Germany owned the patents and you were the beneficial owner thereof in the United States; is that true?

A. That is practically true, except as provided in paragraph 2.

XQ. 700. And then the exception. I am coming to that.

A. Thank you.

XQ. 701. The exception is contained in paragraph 2, and is as follows: "The Laboratories shall have the right to compound arsenobenzol for the purposes of experiments in Dr. Schamberg's laboratory, and also for use only on charity patients, without charge for medicine or service in the hospital clinic of Dr. Schamberg, as long as said Dr. Schamberg is in charge of said hospital clinic. But the provisions of this paragraph are limited to one laboratory and one hospital clinic at a time."

A. Yes, sir.

XQ. 702. In other words, as long as Dr. Schamberg was willing to treat poor people who could not pay, you were not going to interfere with him in making enough to supply the poor people, is that it?

A. I presume that was the intent of this paragraph; certainly.

XQ. 703. But you provided in this agreement, did you not, that you had the right to call on Dr. Schamberg and his laboratory to manufacture for your use any amount of this stuff that they could manufacture?

A. I think that was provided.

XQ. 704. And you were buying it from them at $1.20 per ampule, were you not?

A. In 50,000 ampule lots.

XQ. 705. I did not ask you in how many lots.

A. No, sir; $1.50 for the 06, which was the average size.

XQ. 706. Didn't you buy it at $1.20 for the four-ounce size?

A. For the 04, yes, the smaller size.

XQ. 707. And for the six-ounce you paid $1.50?

A. Not six-ounce; six-tenths of a gram.

XQ. 708. $1.50.

A. $1.50 I paid.

XQ. 709. And you were selling it at $4.50?

A. No, sir; I was selling it for $2.50 to the physicians in small quantities.

XQ. 710. $2.50?

A. In small quantities. I had to repack it and everything else.

XQ. 711. And wasn't the reason that you sold it only at $2.50 because Dr. Schamberg insisted——

A. No, sir.

XQ. 712. Wait a minute. ——insisted that the only condition upon which he would give you any of this stuff was that you would charge no more than $2.50?

A. I don't say that is so. I agreed to that price. That was quite ample to cover my expense and profit.

XQ. 713. Didn't Dr. Schamberg insist that you should place a maximum on the sales price at $2.50?

A. I probably agreed with him on that.

XQ. 714. What?

A. I probably agreed with him as to that.

XQ. 715. He asked you and you agreed with him?

A. I don't know. I may have made the suggestion myself.

XQ. 716. Did you volunteer it?

A. Possibly, yes.

XQ. 717. At all events that was an agreement between you?

A. It was an agreement, certainly, and was carried out.

XQ. 718. You say here that you were the sole

beneficiary in the United States of these patents and in the agreement you described yourself as having the sole and exclusive right of exploitation in the United States of America, as the sole licensee for the United States and Canada for salvarsan?

A. Where is that, Mr. Kresel?

XQ. 719. You will find it in the recital to the agreement that we have just been discussing. Would you like me to read it to you again?

A. I would like to be sure of the wording; that is all.

XQ. 720. Well, I will read it to you. Will you follow me?

A. Yes.

XQ. 721. The language is: "That The Foreign Corporation has assigned to Hoechst Co. the sole and exclusive right of exploitation in the United States of America of salvarsan, and that Hoechst Co. is the sole licensee for the United States and Canada for salvarsan."

A. Yes, sir.

XQ. 722. That is what you say in the agreement?

A. Yes, sir.

XQ. 723. Did you get that sole license in writing?

A. Yes, I had it for years.

XQ. 724. Have you got it here?

A. I put it in the contracts, all up to the last one, which I haven't got a copy of with me.

XQ. 725. I do not know what contracts you are talking about.

A. The contracts with the people abroad.

XQ. 726. Show me in your contracts here what you are referring to.

A. I will take the original contract. That was always continued. 1902 is the original agreement. Here is one paragraph in the contract of 1902.

XQ. 727. Wait a minute, please, so that we will identify the instrument.

A. That is the original contract.

XQ. 728. You are reading from the instrument which is marked Defendant's Exhibit C for Identification. Now go on and give me the page, please.

A. On page 8.

XQ. 729. Now, go on.

A. (Reading.) "And the said Farbwerke agrees that if the said Metz faithfully performs his obligations under this agreement, the said H. A. Metz & Co.,"—this covered dyestuffs and the same holds good for chemical and other products.

XQ. 730. I did not ask you about dyestuffs. I am talking about salvarsan.

A. That is all their products.

XQ. 731. If that refers to salvarsan, of course, you will read it.

A. Salvarsan was not made in 1902. My agreement is to handle their products. That continued to date, practically.

XQ. 732. Is there anything in that portion of the agreement that you want to read about salvarsan?

A. No specific reference. Their products are mentioned.

XQ. 733. Please tell me what you have in writing——

A. A contract.

XQ. 734. Wait until I finish. ——on which you base the claim in this agreement with Dr. Schamberg that you had the exclusive license in the United States for salvarsan?

A. I had no specific—I had a contract for all their products in the United States, everything they made.

XQ. 735. I will broaden my question. I will let you read anything that you have in any agreement,

which you say sustains that claim. Now go on and read anything that you want.

A. (Reading.) "For the term of five years from said January 1st, 1903, shall have the exclusive sale of the products of the said Farbwerke in the United States of America; and the said Farbwerke during the said term, will not directly or indirectly sell any of its products to any other person, association or corporation in the United States of America, without the written consent of the said Metz first obtained." That was continued in each contract, as a renewal of the contract from the original contract of 1902.

XQ. 736. What is the date of the last contract you had with your principals?

A. The last was some time in 1913.

XQ. 737. Which you say you have not here?

A. Which is probably in the Court records in New York.

XQ. 738. You haven't it here?

A. No, I haven't it here.

XQ. 739. You had the contract of 1912 here?

A. I have all the previous ones here.

XQ. 740. Look at the 1912 contract and read me what there is there about it?

A. Here is a paragraph in here.

XQ. 741. Page what?

A. Page No. 11.

XQ. 742. What is the number of the exhibit?

A. It is the agreement of 1912; 22nd day of July, 1912 (Defendant's Exhibit F for Identification), paragraph 11.

XQ. 743. Go on.

A. (Reading.) "And the said German corporation agrees that if the obligations under this agreement by the other parties to be performed are faithfully performed by them, the said H. A. Metz & Co., so long as the said Metz remains President and General

Manager as aforesaid, shall have the exclusive sale of the products of the said German corporation in the United States of America; and the said German corporation during the said term will not, directly or indirectly, sell any of its products to any other person, association or corporation in the United States of America, without the written consent of the said Metz first obtained," and so forth.

"And during the said period it will sell its products to the said H. A. Metz & Co. at their lowest market prices, and will not, directly or indirectly, sell any of its products to any person, association or corporation in any part of the world, except to European manufacturers of goods similar to the products of said German corporation, at a lower price or upon more favorable terms than those given to the said H. A. Metz & Co."

XQ. 744. Is that all you want to read?

A. (Reading.) "This paragraph is understood to mean that the German corporation will, as to prices, in no event permit underselling of said H. A. Metz & Co. in the markets of the United States; but in case of extraordinary or special instances, arising in the sale of the products of the German corporation in other countries, when it is necessary to meet special competition in such other countries, the German corporation may, in order to meet such special competition, sell at prices below the 'lowest market price' above referred to, which 'lowest market price' means the general and ordinary lowest market price."

XQ. 745. Now, is that all?

A. Well, that is the agreement I had with them; that I had the sole right to sell all their products.

XQ. 746. Now please put the contract away if you are through with it.

A. Here is the pharmaceutical end, if you want that.

XQ. 747. I want you to read whatever you want to read in answer to that question.

A. Well, the question was, did I have the exclusive rights to the sale of their goods in this country.

XQ. 748. You misunderstood the question then.

A. What is the question?

XQ. 749. I will read it to you again. Were you, as you recited in this agreement with Mr. Schamberg, the sole licensee for the United States and Canada for salvarsan?

A. Yes, including their other products; sole licensee.

XQ. 750. Or were you simply an exclusive agent to sell that product? Now, which was it?

A. I had the license to sell under the agreement and was the exclusive agent, both. Nobody else had a right to sell it. I think that answers the question.

XQ. 751. You claim to have had a license, do you?

A. Will you define "license?"

XQ. 752. I would like you to do that. You were the one who made this agreement, were you not?

A. The counsel; my counsel and his counsel.

XQ. 753. Did you have a license or didn't you?

A. I had an agreement to sell, which is a license to sell, certainly.

XQ. 754. Did you have a license to make?

A. Not at that time. In 1916—yes, I had a license to make in 1916. 1916, yes.

XQ. 755. When did you get that?

A. I got that when my brother went to Europe in January to May, in 1916.

XQ. 756. And you had the exclusive license to manufacture in the United States, did you?

A. I had their permission under the patent to work those——

XQ. 757. Answer my question. Did you have an exclusive license to manufacture salvarsan in the United States?

A. Nobody else had to my knowledge.

XQ. 758. And that is what you were referring to in this recital that I have read to you?

A. Undoubtedly.

XQ. 759. Was that license in writing?

A. That license was in writing in Europe.

XQ. 760. Have you the writing?

A. No. I can explain why, if you will let me.

XQ. 761. And you say it was made when?

A. Early in 1916, while my brother was in Europe.

XQ. 762. And was it to be for the life of the patent?

A. There was no stipulation. I was allowed to make salvarsan for use in this country.

XQ. 763. Was it for the life of the patent?

A. I so assume.

XQ. 764. You understood that to be so?

A. I understood they could stop me if they wanted to later on, but I had a license to make it and did make it.

XQ. 765. I do not want your assumptions. Did you not claim to have the exclusive license for the life of the salvarsan patent to manufacture the product in the United States?

A. I do not know as I claim the life of the patent.

XQ. 766. How long did you claim?

A. It did not occur to me. I had a right to make it; that is all.

XQ. 767. Exclusive right?

A. The exclusive right from the patentees.

XQ. 768. You had that right in 1916, did you not?

A. Yes, sir.

XQ. 769. And in 1917?

A. Yes, sir.

XQ. 770. And in 1918?

A. Yes, sir.

XQ. 771. And in 1919?

A. Yes, sir.

XQ. 772. And in 1920?

A. Yes, sir.

XQ. 773. And up to this very day?

A. Up to date. And I am still doing it.

XQ. 774. And so when the Alien Property Custodian sold this patent to The Chemical Foundation, it was subject to that exclusive license of yours, was it not?

A. I so assume.

XQ. 775. You not only claimed that you had the exclusive license to manufacture salvarsan here, but you claimed that you owned the patents, did you not?

A. No, sir; I did not.

XQ. 776. Never?

A. I owned the trade-marks, not the patents.

XQ. 777. Did you never claim you owned the patents?

A. Never claimed I owned the patents. If I did, I was mistaken and didn't know what that meant.

XQ. 778. Well, you would not have made a mistake like that, would you, Colonel Metz?

A. I do not assume so.

XQ. 779. No, of course not.

A. The trade-marks I owned.

XQ. 780. So that, as you sit there, you do not recall any occasion when you ever made the claim that you owned the patents?

A. I do not recall such a claim. If I did, it was a mistake.

XQ. 781. I show you a letter to Dr. Sidney R. Miller dated May 9th, 1918, addressed to Sidney R. Miller, 11 East Chase Street, Baltimore, Maryland, signed by you. I just want to know whether you wrote it? Is that your signature?

A. It looks like it. It is a photostat of what may be my signature.

XQ. 782. I will read to you from this letter: "In

the meantime, Dr. Schamberg here had begun to place his articles on the market. After conference with him I agreed on humanitarian grounds not to interfere with his product if I had all the patent rights and powers to sue and recover from him." Did you write that?

A. I had power to——

XQ. 783. Did you write that?

A. I did, yes, undoubtedly, and had the right.

XQ. 784. That is, you had all the patent rights, did you?

A. To sue and recover.

XQ. 785. Did you have all the patent rights?

A. No, but I had a power of attorney to sue and recover.

XQ. 786. You say you had a power of attorney?

A. Yes, sir, to sue.

XQ. 787. Is that what you mean by saying that you had all the patent rights and powers to sue and recover?

A. Yes, sir, that is what I meant, exactly.

XQ. 788. Where is your power of attorney?

A. It is in the file. I had a suit in Detroit, and it is in the record.

XQ. 789. Where is it? I do not care anything about your suit.

A. I do not have it here. It is in the record.

XQ. 790. What record?

A. One of the Congressional hearings.

XQ. 791. Well, find it during the lunch hour.

A. Yes, I will try to find it, if it is here. If not, I will endeavor to have a copy.

XQ. 792. Now, I have read that to you. Does it refresh your recollection that there were other occasions when you claimed to own the patents?

A. I sued on one occasion.

XQ. 793. What?

A. I sued on one occasion.

XQ. 794. I did not ask you about that?

A. Well, that is an occasion.

XQ. 795. You mean you brought a suit as owner of the patent?

A. No, as attorney to bring under the patent—to sue under the patent, to stop importation from Canada.

XQ. 796. You brought a suit, anyway?

A. Yes, sir, my attorneys did.

XQ. 797. Where was the suit brought?

A. Detroit, as I recall.

XQ. 798. When?

A. I do not recall the date; some time——

XQ. 799. What is the name of the party whom you sued?

A. I think it was A. C. Smith. It is all in the record. You can find it.

XQ. 800. "A. C. Smith?"

A. I think it was; in Canada, who sent goods to this country, to Detroit.

XQ. 801. Whatever rights you had or claimed, you have had up to this very day, have you not?

A. I assume so, yes, sir, certainly.

XQ. 802. And had them in 1919?

A. Yes, sir.

XQ. 803. And these are substantial claims by you, are they not?

A. What do you mean "substantial claims?"

XQ. 804. That is English, is it not?

A. The claims——

XQ. 805. Don't you understand the word "substantial?"

A. Yes, but in that connection is it substantial?

XQ. 806. They are not trumped up by you, are they?

A. No, sir, if that is what you mean.

XQ. 807. So anybody that bought these patents bought them subject to your claims, didn't they?

A. To allow me to continue, certainly.

XQ. 808. Didn't they?

A. Yes, certainly.

XQ. 808 (continued). Subject to whatever claims you had. Now, weren't there other occasions when you claimed to own these patents. Think, now.

A. I do not recall until we entered the war what claims I made. After that I made no claims.

XQ. 809. You may have made them, without knowing?

A. No. I could refresh my memory. I have got records, undoubtedly—may have.

MR. ANDERSON: I do not care to interrupt the examination here, but the witness has expressly said that all he claimed to have was a right to sue in order to protect his rights under those patents; but counsel has, I think, inadvertently said a number of times that the witness claimed to own the patents. The witness has expressly stated he did not make any such claim.

THE COURT: What is your specific objection?

MR. ANDERSON: My objection was to the form of the question, in which he recited the evidence of the witness incorrectly. He has put upon the record a statement as coming from the witness which the witness's evidence does not support, and I am objecting to the form of framing the question.

MR. KRESEL: Do you want to strike out the answer, Colonel?

MR. ANDERSON: With that statement on the record, I would not go back to strike the question out.

MR. KRESEL: All right, let us leave it.

MR. ANDERSON: That will be all right.

XQ. 810. Do you now say, Colonel, that you did not own these patents?

A. I never owned the patents.

XQ. 811. Did you ever have any interest in them whatsoever except such as you have now disclosed?

A. None, except the right to manufacture under them, and to handle——

XQ. 812. The exclusive right?

A. The exclusive right from the people abroad.

XQ. 813. Did you not have an agreement with the Germans who owned the patents that they should convey them to you?

A. No, sir, I tried to get them, but did not——

XQ. 814. Didn't you have such an agreement? You said, "No, sir," didn't you?

A. No, sir, I did not have.

XQ. 815. You appeared as a witness before the sub-committee of the Committee on Commerce of the Sixty-fifth Congress and there testified, and I shall read a portion of your testimony.

MR. ANDERSON: At what time?

MR. KRESEL: Do you mean the date?

MR. ANDERSON: Can you give it to me?

MR. KRESEL: October, 1917.

XQ. 815 (continued). I read to you the following: "I went over to Germany toward the end of 1914 and the beginning of 1915 and took up this question of transferring the patents. They had to consult with Professor Ehrlich and others. It was finally agreed that the patents should be transferred so that I could hold them." Is that true?

A. There was such an understanding——

XQ. 816. Is that true?

A. That is true, yes.

XQ. 817. And that agreement was made at the end of 1914 or at the beginning of 1915, was it?

A. At the end of 1914 when I was over there after

the war started. It was a verbal agreement, to be carried out later on.

MR. KRESEL: May I, if your Honor please, have this witness not volunteer statements? I ask to strike out everything after "The end of 1914" as not responsive.

THE COURT: Read the question, please.

(XQ. 817 repeated as above recorded.)

THE COURT: What portion do you want stricken out, Mr. Kresel?

MR. KRESEL: The part in which he says that it was a verbal agreement to be carried out later on.

THE COURT: Let it be stricken out.

XQ. 818. You said on the same occasion: "I had our attorney some years before bring one suit against the infringer who bought the genuine German product and sold it in this country from Canada. I sued and enforced my sole rights in the patents against him." Is that true?

A. It should be "under the patents" instead of "in."

XQ. 819. Is that true?

A. I suppose I said that, yes. I said that undoubtedly.

XQ. 820. So you said before Congress that you had the sole rights in the patents, did you?

A. Under the patents is what I meant, no matter what I said.

XQ. 821. You testified before this committee also as follows: "After I got back from Europe I sent my brother over early in 1916, who is a trained chemist, for the patents, to have them finally transferred." Is that true?

A. Yes, sir; I intended to have it transferred.

XQ. 822. With your recollection now refreshed, do you recall any other occasion when you made the

claim that you had the sole rights in the patents or that you owned them?

A. I never claimed to own the patents. I had the sole rights under them at all times. I made no secret of it but asserted it very often.

XQ. 823. And you made no secret of your claim to the sole rights in these patents, did you?

A. I had no rights in the patents. I had them under the patents, Mr. Kresel.

XQ. 824. The sole rights under the patents?

A. Yes, sir.

XQ. 825. When did you start to try to make salvarsan in the United States?

A. As soon as my brother got back from Europe with the data as to machines, and so forth.

XQ. 826. Well, when; in January, 1916?

A. Yes.

XQ. 827. You say he stayed there four months?

A. Approximately.

XQ. 828. That would bring it to May, 1916?

A. Approximately.

XQ. 829. So as soon as he returned you started to try to produce the product?

A. I started to install a plant, to buy machinery.

XQ. 830. Well, that was a preliminary step, of course.

A. Certainly; necessary to any production.

XQ. 831. When did you first produce salvarsan in the United States on a commercial basis?

A. I told you Saturday that I do not remember the exact date. I am having it looked up, when I first sold it. It was made in 1916. I will try to have the information for you later on.

XQ. 832. In what year?

A. The end of 1916. We made some in 1916, undoubtedly.

XQ. 833. When did you have it ready for the market?

A. I think early in 1917.

XQ. 834. Early in 1917?

A. I think so. I am getting the exact dates for you from New York. You requested that on Saturday and I am having that looked up.

XQ. 835. I show you a letter that you sent to Honorable Charles Warren, Assistant Attorney General, Department of Justice, under date of May 11, 1917 (handing witness). Did you send that?

A. I recall such a letter, yes. I assume this is a copy.

XQ. 836. I read from that letter, which is dated May 11, 1917, the following: "I have received from the German owners of these patents verbal permission to manufacture these products in this country and full information relative to the processes of manufacture; that I have the factory and machinery for such purpose and will be able to supply the market within the next month or two."

A. I so thought at that time.

XQ. 837. So in May, 1917, you thought you would be ready to supply the market either in June or July, 1917?

A. Yes, sir.

XQ. 838. That was more than a year after you started in to try to produce?

A. It took us months to get the machinery.

XQ. 839. It was a year after you started in to try to produce?

A. No, the year after I started to build the plant.

XQ. 840. All right, have it that way. Is it not a fact that you did not start to produce until June, 1918?

A. I must refresh my memory on that, Mr. Kresel. I am doing that. I am having these dates looked up in New York.

XQ. 841. Is it not a fact that during the last six months of 1918 you lost $38,000 in trying to make salvarsan?

A. I presume my records show that. I have got such a statement. Not in trying to make salvarsan.

XQ. 842. Listen, Mr. Metz, or Colonel Metz, I asked you a question.

A. Yes, sir.

XQ. 843. Is it the fact that during the last six months of 1918 in trying to make salvarsan you lost $38,000 on the transaction?

A. I did not try. I sold salvarsan for less than the cost of production, that is what it means, and at an agreed price with the Government. That is why I lost the money.

XQ. 844. Did you lose $38,000?

A. My records, I think show it. An examination of my books shows it—in one concern. I have those figures somewhere.

XQ. 845. And in 1918 your production of salvarsan was no good, was it?

A. Oh, no, I beg your pardon. It was as good as anybody else's, that went into the Government market. It passed the Government test or would not have gone into the market.

XQ. 846. Do you not remember the attack made on you by Dr. Sargent because when he used your stuff on five patients he almost lost them, they almost died?

A. I know they didn't know how to use it and had lots of deaths because they could not use the product.

XQ. 847. Do you not remember that article was printed in the Medical Journal and that you got your lawyers to write a letter to Dr. Sargent that you would hold him responsible for damages?

A. Yes, sir, because the same article was used elsewhere and proved satisfactory.

XQ. 848. And is it not a fact that as late as June, 1918, you did not know how to produce salvarsan?

A. I beg your pardon, I did know as well as anybody else.

XQ. 849. Is it not a fact that you got Dr. Schamberg to come and show you how to make it?

A. I did not. Dr. Stieglitz suggested it and we never got together.

XQ. 850. Did you not sign an agreement with Dr. Schamberg in June, 1918, to come and show you how to make salvarsan?

A. Dr. Stieglitz prepared some such agreement in the interest of the consumers of the country to get together and make a satisfactory product that was alike all around.

MR. KRESEL: I ask that the answer be stricken out.

THE COURT: The answer will be stricken out and the question repeated.

XQ. 851. (XQ. 850 read as recorded above). Just say yes or no, please.

A. I do not recall signing it. I remember such an agreement.

XQ. 852. Now let me show you a copy of it.

A. It was never carried out.

XQ. 853. I ask you do you recognize your signature on it (handing witness)?

A. Certainly, I am willing to do anything at all to satisfy you.

XQ. 854. Is that your signature?

A. Let me see it. Yes, that is my signature—a copy of it.

XQ. 855. Now I will read to you from this agreement.

MR. ANDERSON: Will you have it identified, Mr. Kresel?

MR KRESEL: Yes I will just mark it for identification.

Same marked "Defendant's Exhibit G, for Identification."

XQ. 854. (continued) "The Dermatological Research Laboratories through Doctors Schamberg, Kolmer and Raiziss and others, having expert knowledge and experience concerning the manufacture of arsphenamine of a minimum and safe degree of toxicity agreed to place their knowledge and experience at the service of Mr. H. A. Metz and his laboratories without unnecessary delay and in a sincere effort to bring his product up to the standards demanded by the Government without delay, in such a way however, that the manufacturing of arsphenamine of the Dermatological Research Laboratories shall not be crippled or interfered with. To accomplish this, Dr. Raiziss will, without delay, arrange his management of the manufacturing plant in such a way as to be in a position to give time and attention to the task of improving the product of the Metz Laboratories." That was the agreement you signed?

A. What was the date of that?

XQ. 855. June 8, 1918.

A. And what was the Sargent letter?

XQ. 856. I will answer questions when you are through answering them. I read further from this agreement.

THE COURT: Was the question answered?

MR. KRESEL: Yes, sir.

XQ. 856. (continued) "In return for this valuable assistance, rendered by the Dermatological Research Laboratories, Mr. Metz will agree for himself, that the companies in which he is interested and his assignees: (a) In the event that the Treaty of Peace should for any cause nullify the license of the Dermatological Laboratories to manufacture arsphenamine as at pres-

ent, these laboratories under the trusteeship of Doctors Schamberg, Kolmer and Raiziss or their successors, will be permitted to continue to manufacture and sell arsphenamine to the extent of a minimum of 3,000 ampules of 0.6 grams per week and not to exceed 10,000 tubes per week or 10 per cent of the needs of the country in arsphenamine, (or its derivatives), in case Mr. Metz or any of his companies or assignees should have control of the German rights in any way after the Treaty of Peace has been signed."

A. Yes, sir; perfectly true.

XQ. 857. That was your agreement?

A. Yes, sir; my position exactly.

XQ. 858. And then you agreed: (b) In the event that the Treaty of Peace does not nullify the license of the Dermatological Research Laboratories to manufacture arsphenamine after the war or in the event that Mr. Metz is not in the position to guarantee to the Dermatological Research Laboratories the right to manufacture arsphenamine after the war to the extent indicated in paragraph a, Mr. Metz and his Laboratories for the valuable services received will pay the Dermatological Research Laboratories a royalty on the manufacture of salvarsan under license from the Federal Trade Commission for the duration of the war."

A. Yes, sir.

After Recess.

XQ. 859. Mr. Metz, I was asking, when we adjourned for recess, about this agreement of Dr. Schamberg or the Dermatological Laboratories, dated June 8, 1918, and in connection with that you asked me if I could give you the date of the letter from Dr. Sargent. You remember that?

A. Yes, sir.

XQ. 860. I show you now a copy of Dr. Sargent's

letter as it was printed in the Journal of the American Medical Association under date of March 30, 1918. So you will see that that letter of Dr. Sargent's preceded the agreement of June 8, 1918?

A. That shows it.

XQ. 861. So we have it now, Mr. Metz, that as late as June 8, 1918 your product, salvarsan, was not up to the standard demanded by the Government?

A. I don't admit that, sir. The Government passed it before it was sold.

XQ. 862. I read to you from the agreement: "The Dermatological Research Laboratories, through Dr. Schamberg, Kolmer and Raiziss and others, having expert knowledge and experience concerning the manufacture of arsphenamine of a minimum and safe degree of toxicity agree to place their knowledge and experience at the service of Mr. H. A. Metz and his laboratories without unnecessary delay and in a sincere effort to bring his product up to the standards demanded by the Government without delay."

A. That does not follow. It was passing the Government's standards.

XQ. 863. You mean to say that you signed this agreement with that statement in it, and that that was not true?

A. That was not true. We were passing the Government's requirements.

XQ. 864. You signed this agreement and that was not true?

A. That is not true. I signed the agreement, and the fact is we did pass the Government standards.

XQ. 865. You signed the agreement notwithstanding that what I have just read was not true, is that it?

A. I signed the agreement. It was not true. It was up to Government standards. I signed it to help to get these things—

XQ. 866. I am simply asking one question at a time. I say that you signed this agreement with the statement in it that I have read, and yet that that statement was then untrue; is that what you say?

A. I can not say it was untrue. I said we did pass the Government's standards, despite that statement, and I signed that statement, if that is what you want.

XQ. 867. By this agreement you asked Dr. Schamberg to improve your product?

A. Dr. Stieglitz asked him and I signed it at his request. There you are; that is the statement.

XQ. 868. Did you ask Dr. Schamberg to help you improve your product?

A. Dr. Stieglitz asked him and I agreed to let him and signed that agreement.

XQ. 869. Well, your product needed improvement?

A. They said so. I did not think so. The Government test did not show it.

XQ. 870. And in return for these valuable services you agreed to pay them a royalty?

A. If they were earning it, yes.

XQ. 871. And that was June, 1918, more than two and a half years after your brother had gone abroad and had spent four months through the German factory learning how to make salvarsan, was it not?

A. The dates are there, yes. The questions were raised.

XQ. 872. And for all this time and for years prior thereto you had before you and open to you the patent on salvarsan?

A. And were working and putting out marketable goods.

MR. KRESEL: I ask that "were working and putting out marketable goods" be stricken out.

THE COURT: The motion is granted.

XQ. 873. After we went into the war I think you testified upon your direct that the Federal Trade Commission issued four licenses to manufacturers to make salvarsan?

A. Yes.

XQ. 874. You knew that such licenses were being granted by the Federal Trade Commission, did you not?

A. Naturally.

XQ. 875. You knew that the Massachusetts State Department of Health was asking for a license to manufacture salvarsan, did you not?

A. I had been informed they were doing it for their own hospitals. I did not know about the license.

XQ. 876. Did you know they were asking for a license?

A. Possibly. I cannot say definitely.

XQ. 877. Did you know that the New York State Board of Health was asking for a license from the Federal Trade Commission?

A. I knew later on that they had a license for manufacturing, yes.

XQ. 878. And did you not protest against the Federal Trade Commission issuing licenses to these State Boards of Health?

A. As a matter of fact, I protested against all licenses.

XQ. 879. Did you or did you not?

A. I did, against all licenses.

XQ. 880. I show you a letter from yourself to Dr. G. W. McCoy, Director of Hygienic Laboratory, Public Health Service, Washington, D. C. Did you write that letter to him (handing witness)?

A. Yes, sir.

XQ. 881. That letter is dated March 14, 1919, and appears at page 839 on the Hearings on Resolution

No. 77. You say in that letter: "My dear Dr. McCoy: I wrote to the Federal Trade Commission today in regard to the application of the Massachusetts State Department of Health for licenses. I also protested against a license being granted to the New York State Board of Health. I feel in doing this I am justified in the position I take and I would like to hear from you whether you favor the various State Boards making their own product or not. Personally my experience with the New York City Board of Health when I was Controller satisfied me that it was a very unfair competition against private enterprise."

A. Yes, sir.

XQ. 882. That was your humanitarian point of view?

A. That was my commercial and humanitarian.

XQ. 883. Was it?

A. Yes, sir. I did not think it was fair to private individuals.

XQ. 884. In other words, you objected to the Federal Trade Commission giving a license to the State of Massachusetts and the State of New York to manufacture their own salvarsan?

A. To anything in competition with private enterprise; yes, sir.

XQ. 885. Up to the time of the war you had a monopoly of salvarsan in the United States?

A. Yes, sir.

XQ. 886. And up to the time of the war you were selling to physicians, you told us—no, you were selling it at wholesale at $2.50 a dose?

A. Yes, sir.

XQ. 887. And during the war you raised the price to $4.50 a dose?

A. To physicians direct, in small lots.

XQ. 888. And to the Government?

A. No, I do not recall that. I sold to the Government for $1.17.

XQ. 889. Didn't you charge the Government $4.50 in 1915?

A. You have made that claim and I have got to verify it. I do not know; I took your word for it.

XQ. 889-a. You testified to that last Saturday. Do you want to take it back?

A. I will want to qualify it after I look at my record. You may have said the imported stuff. I will tell you why I did it if you want to know.

XQ. 890. I do not want to know why did you it. So that when you had the monopoly, you were charging $2.50 wholesale, and until you satisfy the Court that you were wrong on Saturday, I will take it that your testimony stands that you were charging $4.50 during the war?

A. I did to physicians. I admit that.

XQ. 891. You admit charging that to the physicians?

A. Direct to the physicians.

XQ. 892. Since the war and since the Federal Trade Commission issued licenses for the manufacture of this product and since The Chemical Foundation have issued licenses on this product, what is it selling at now?

A. I sold to the Government at $1.00 when I started making it.

XQ. 893. What is it selling at now?

A. I made a bid last Monday to the Government, thirteen cents a dose for its requisitions. That is the cost price.

XQ. 894. Thirteen cents a dose; and what are you selling it to physicians at?

A. I do not recall without going to my records.

XQ. 895. Sixty cents a dose, isn't it?

A. Possibly in single packages. We are required to go to a different expenditure than with the Government's stuff.

XQ. 896. And there is keen competition in the market now, is there not?

A. Yes, sir.

XQ. 897. You no longer have the monopoly, have you?

A. No, sir.

XQ. 898. And there is no monopoly in the product of salvarsan, is there?

A. No, sir. I should say no in the sense that monopoly is a control.

XQ. 899. What was that last? I did not get it.

A. In the sense that monopoly is a control.

XQ. 900. I do not want to know your sense. You understand the word "monopoly." I asked you whether to your knowledge there is a monopoly in the market of the supply of salvarsan?

MR. ANDERSON: If counsel will permit me, I do not think the question asked for anything but a conclusion. What is a monopoly is a conclusion of law founded on facts.

THE COURT: This witness has found no difficulty, Colonel Anderson, in testifying about a monopoly in previous answers. I shall assume that he knows the meaning of "monopoly" as embodied in that sentence. The objection is overruled.

MR. ANDERSON: Exception.

XQ. 901. Is there, Colonel Metz?

A. In the ordinary sense of monopoly, no.

XQ. 902. Did you testify before the Shortridge Committee as follows; I read from page 818. The Chairman said to you:

"Is there any other company manufacturing the same article?"

You said:

"Oh, yes. The Federal Trade Commission licensed four manufacturers, and Mr. Garvan, or The Chemical Foundation, I think, licensed, I think, four or five others, but of those he licensed, I think only one is producing, in a liquid form.

"THE CHAIRMAN: Is there any combination between you and other manufacturers of salvarsan?

"MR. METZ: No, sir; no combination of any kind."

That was true?

A. Yes, sir.

XQ. 903. And is it true today?

A. As far as I know, yes. None that I am interested in.

XQ. 904. At page 869, the Chairman asked you:

"Is there any monopolistic arrangement between you and any other concerns?

"MR. METZ: No, sir; not even an understanding.

"THE CHAIRMAN: Do you know of any combination?

"MR. METZ: Not at the present time.

"THE CHAIRMAN: Do you know of any combination at all now or in the past?

"MR. METZ: Not in these things I am talking about."

Was that true?

A. Yes, sir; absolutely.

XQ. 905. And is it true now?

A. Yes, sir; so far as I know.

XQ. 906. And is it not the fact that the American product salvarsan is as good as the German ever was, and better?

A. It is so conceded by the Government testers and by physicians that are using it.

XQ. 907. Now, coming to the dye industry, Mr.

Metz, you have told us that before August, 1914, there were in this country no factories producing dyes, but that there were, I think you said, six assembling plants?

A. They were called assembling. They were dye-producing plants; but they were practically assembling dyes. That is the term used in the reports of Mr. Choate or anybody else.

XQ. 908. Since the war and since these patents were seized—I mean the German patents covering dyes that are here in question—and since The Chemical Foundation has been operating, has the number of producers of dyes in this country increased or decreased?

A. It has increased, but not because of the patent.

XQ. 909. I did not ask you——

A. I beg your pardon.

MR. KRESEL: May I ask that that be stricken out after "it has increased?"

THE COURT: Let it be stricken out.

XQ. 910. And can you tell us how many manufacturers there are today in this country producing dyes?

A. No, sir.

XQ. 911. Can you give us an approximate number?

A. No, sir.

XQ. 912. Are there as many as 160?

A. I should not say there were that many producing, no, sir. They claim to be, but they are not producing dyes, really.

XQ. 913. Are there as many as a hundred?

A. I should say no; emphatically no.

XQ. 914. Are there more than six?

A. Oh, yes.

XQ. 915. Well, you are one of the producers——

A. (interrupting). I am two of them.

XQ. 916. ——aren't you? What?

A. I am two of them.

XQ. 917. You have taken out licenses from The Chemical Foundation, haven't you?

A. Not for colors. I took from the Federal Trade Commission for colors, one of my plants.

XQ. 918. So you hold no licenses covering dyes from The Chemical Foundation?

A. No, sir. Oh, for importation, yes; not for manufacturing.

XQ. 919. You notice I did not restrict my question to manufacturing, did I?

A. Well, we were talking of manufacturing, Mr. Kresel. Pardon me if I did not cover the full ground. We pay licenses when we import patented colors, as they come in.

XQ. 920. And is it not a fact that today the American chemical industry is producing 90 per cent of the United States dyes in that way?

A. Undoubtedly; of the unpatented products.

MR. KRESEL: May the last part be stricken out—"of the unpatented products?"

THE COURT: Let it be stricken out.

THE WITNESS: I beg your pardon, your Honor.

XQ. 921. And the dyes that are being produced by American manufacturers are as good as the German ever were?

A. Many of them, yes.

XQ. 922. And we are no longer dependent upon Germany for our dyestuffs, are we?

A. Thank God, no—and I helped bring it about.

XQ. 923. And we are neither dependent on them for dyes nor for pharmaceuticals?

A. That is right, we are independent of them.

XQ. 924. Of course, you believe in an American dye indsutry?

A. Absolutely.

XQ. 925. Your heart is wholly here?

A. My money is in it.

XQ. 926. No part of it back in Germany?

A. Not money, no, except a little stock I own here, and that I bought since the war.

XQ. 927. You believe in protecting and fostering the American industry?

A. Absolutely.

XQ. 928. Yes. Indeed, you have been very active in trying to do that?

A. In getting a satisfactory duty on it, yes, sir.

XQ. 929. Haven't you?

A. Yes, sir, I have been.

XQ. 930. When there was a petition before Congress to have an embargo against the importation of German dyestuffs, you were in favor of it, weren't you?

A. I was against it as unfair and unnecessary.

XQ. 931. Although you were a manufacturer, and if the German dyes had come in they would have been in competition with you?

A. I wanted——

XQ. 932. Isn't that right?

A. If they had come in free of duty, yes. I wanted a high duty to protect me as a manufacturer, and so stated on every occasion.

XQ. 933. You have been very anxious to import German dyes, haven't you?

A. No, sir; not anxious at all. I give my customers what they want.

XQ. 934. You have been asking the Government's leave to import German dyes, haven't you?

A. On customers' licenses.

XQ. 935. Haven't you?

A. On customers' licenses.

XQ. 936. I did not ask you on what.

A. No, sir, I did not ask to import dyes——

XQ. 937. Haven't you been asking the Govern-

ment ever since 1919 to be permitted to bring in German dyes?

A. My customers asked for licenses which I imported for them under the embargo act.

XQ. 938. And haven't you been importuning the Government to allow you to bring in German salvarsan?

A. Yes.

XQ. 939. Yes.

A. For physicians who desired it, on one occasion.

XQ. 940. Indeed, you are now bringing in German salvarsan, are you not?

A. I did bring in two lots, I think for physicians who wanted it and stated they preferred it for their own reasons.

XQ. 941. Now, you were not only active in investigations before Congress on the question of dyes, but you financed investigations of that sort, did you not?

A. No, sir, I never financed any of them.

XQ. 942. Let us see whether you did not. Do you know a man named Pickerel?

A. He is in my employ; certainly.

XQ. 943. Do you know a man named Dieters?

A. I met such a man in Washington; he used to be with the Chemical Warfare Service.

XQ. 944. Just met him casually?

A. He came to me.

XQ. 945. What?

A. Came to me with some stories.

XQ. 946. Came to you? I see.

A. Certainly.

XQ. 947. Did you employ him?

A. No, sir, I did not employ him for a moment.

XQ. 948. Did you pay him any money?

A. I loaned him some money, and I gave him some money when he lost his position.

XQ. 949. How much did you loan him?

A. I do not recall the figures. Several hundred dollars I presume. He came to me and told me he lost his position. That is my best recollection, Mr. Kresel.

XQ. 950. Now, Mr. Metz, it is not up to me to warn you and I do not propose to intimate that you are not telling the truth.

A. I am doing the best I can, Mr. Kresel.

XQ. 951. But I ask you again whether it is not a fact that you employed this man Deiters to get for you affidavits to be used in the dyes investigation, and that you paid him $6,000 in cash——

A. Oh, no.

XQ. 952. Wait a minute.

A. Go on.

XQ. 953. And that he rendered you a bill on the 23rd of October, 1922, for $14,765 for such services?

A. I have no such recollection.

XQ. 954. Is it simply a matter of recollection with you, Mr. Metz?

A. Mr. Deiters sent me a bill for something, and I sent it back. I don't know what the amount was.

XQ. 955. Oh, he did send you a bill?

A. He did send me a bill. I do not know what the amount was.

XQ. 956. Never mind what the amount was.

A. May I correct that?

XQ. 957. What did he send you a bill for?

A. May I correct that?

XQ. 958. No.

A. It was not a bill.

XQ. 959. What did he send you a bill for?

A. I don't know. He said he needed some money, and sent me a memorandum.

XQ. 960. Sent you a memorandum or a bill because he needed money, did he?

A. Yes.

XQ. 961. And how much money did he need?

A. I don't remember the figures. I have got to look it up. I never gave it any attention, Mr. Kresel. I will have to refresh my memory. I do not know.

XQ. 962. Now look at the bill or memorandum and see if that refreshes your recollection (handing paper)?

A. Yes, that is it; but there is no basis for it.

XQ. 963. No, wait a minute; "that is it," that is enough.

A. But no basis for it.

MR. KRESEL: I ask that it be marked for identification.

THE COURT: Let it be so marked.

Paper marked "Plaintiff's Exhibit H: for Identification."

THE WITNESS: Pardon me, Mr. Kresel——

XQ. 964. Just a minute; there is no question pending.

A. Well, I want to modify that one.

XQ. 965. You had a conference with Mr. Deiters at the University Club in New York, did you not?

A. I do not recall the University Club.

XQ. 966. What club was it?

A. I was at a hotel with Senator Moses, as I recall it.

XQ. 967. What hotel?

A. I think it was the Chatham, but I am not certain. Senator Moses——

XQ. 968. In New York?

A. In New York.

XQ. 969. When you mentioned Senator Moses you mean United States Senator Moses?

A. George H. Moses, of New Hampshire, yes.

XQ. 970. And when was it that you had this conference?

A. I do not recall. During one of the hearings in Washington.

XQ. 971. What year was it?

A. I do not recall. It was a hearing before the Senate Committee I presume. You have got the record here. I do not know which one of those hearings.

XQ. 972. When you speak of the Senate Committee, do you mean the Committee over which Senator Shortridge presided?

A. No, previous; the Senator Watson Committee, I think it was called, or the one that he was Chairman of, I think. I believe that is the time.

XQ. 973. And at that meeting you engaged Mr. Deiters to obtain for you, to be used by Senator Moses, affidavits to show that the War Department of the United States was in favor of the dyes embargo and in favor of The Chemical Foundation, because it had been induced to take that position by a certain manufacturer of dyes?

A. I did not engage him, no, sir.

XQ. 974. Did he offer to do that?

A. Senator Moses asked him to.

XQ. 975. Senator Moses asked him to?

A. Asked him to get those records for him, yes, sir, which he had mentioned to Senator Moses.

XQ. 976. You knew that Mr. Deiters was an employee of the Government, did you not?

A. At that time, yes.

XQ. 977. That he was an employee of The Chemical Warfare Service of the Government?

A. Yes, sir.

XQ. 978. And you say now, do you, that Senator Moses, of the United States Senate, and not you, asked this employee of the Government to produce affidavits reflecting upon the actions of the War Department?

A. If he was asked, it was by Senator Moses, not

by me. I never asked him to produce those affidavits for me.

XQ. 979. Well, whether Senator Moses asked him or whether you asked him, is it not the fact that you promised to pay him for producing those affidavits?

A. I did not; I beg your pardon; I did not.

XQ. 980. And is it not a fact that you did pay him for it?

A. After the man lost his position, I gave him money; not for the affidavits, no, sir; never with that understanding, directly or indirectly, never.

XQ. 980a. And this bill or memorandum that you have identified is the bill or memorandum that Mr. Dieters sent you for his services in that connection?

A. I am not responsible for his bill.

XQ. 981. But that is what he sent you?

A. He sent me a bill. I won't say that is the one. He sent me a bill.

XQ. 982. You just said it was?

A. I beg your pardon. I am not sure. I was going to withdraw it and say he sent me a bill. I can not identify the copy you have there.

XQ. 983. Didn't you less than ten minutes ago say that this is a copy of what he sent you?

A. When I said that, you said there was no question. You put your hand up. I am modifying it now. I can't tell until I see my bill home. I do not believe it is such an amount.

XQ. 984. Where is your bill home?

A. I don't know if I ever kept it.

XQ. 985. So that you can not find the bill home?

A. I may be able to. I don't know. I never paid any attention to it. I laughed at it.

XQ. 986. Didn't you a few moments ago testify that you sent it back to Dieters?

A. I think I did; yes, sir. I am not sure.

XQ. 987. Then you haven't got it home?

A. I may have a copy of it home. I don't know. I never paid any attention to it. That is what I am trying to tell you. He sent me a bill which I indignantly repudiated.

XQ. 988. When he sent you the bill, didn't he send you a letter with the bill?

A. I do not recall, Mr. Kresel.

XQ. 989. Look at this letter and see if that refreshes your recollection?

A. I can't help what another man does. That is his construction of it. I had a letter from him. That may be it.

XQ. 990. And when you received this letter and the bill, I want to ask you what you wrote to Mr. Dieters?

A. I don't recall, Mr. Kresel.

XQ. 991. Did you write a letter to him denying what he said in this memorandum?

A. Possibly. No doubt I did.

XQ. 992. Well, will you produce any such letter?

A. If I sent it, how can I produce it? I paid no attention to it.

XQ. 993. Don't you keep copies of your letters?

A. No, I don't, not of very many things. I don't keep copies of personal things. They don't influence me.

XQ. 994. Listen, Mr. Metz——

A. You may have things that I have never seen.

XQ. 995 (reading). "Washington, D. C., October 23, 1922. I, Edward W. Deeters, hereby submit to Mr. H. A. Metz my bill for fees and expenses incurred by me in securing information and affidavits to be used by Senator George H. Moses, of New Hampshire, in the case of the dye embargo as per agreement between Mr. Metz, Senator Moses and myself, made in New York City, New York, in October, 1921, to wit: 1. That all information, evidence, or affidavits

secured by me should be used by Senator Moses and turned over to him or other persons designated by him. 2. That Mr. H. A. Metz take charge of the financial part of this agreement, defraying all fees and expenses incurred by me. Expenses: Personal fee for services rendered, $7,200; traveling expenses, $453; clerical help, $1,000. Special Expenses: (Securing affidavits, maintenance, and traveling expenses of persons making affidavits): Affidavit No. 1, $1,429; Affidavit No. 2, $1,163; Affidavit No. 3, $447; Affidavit No. 4, $942; Affidavit No. 5, $1,319; Affidavit No. 6, $812. Total, $14,765. Received on account, $5,000. Balance due, $9,765." Now I ask you to produce to this Court any copy of a letter from you to Mr. Deeters denying the truth of the statements that he made in this.

A. I will be glad to if I can find such a letter. I shall be glad to look it up just as soon as I go back. If I have a copy I shall certainly submit it, because I deny such statements.

XQ. 996. How much did you pay him?

A. I have not any idea.

XQ. 997. Just try to approximate it for us?

A. Nowhere near that amount.

XQ. 998. He says $5,000. How much do you say you paid him?

A. I gave him a thousand dollars at one time towards a mortgage on his house, I recall that. I do not recall the figures, Mr. Kresel.

XQ. 999. Well, a thousand dollars. Any more than that?

A. I recall one thousand dollars on a mortgage. His wife was sick, and his child, and I gave him a thousand dollars to pay on his mortgage.

XQ. 1000. You gave him a thousand dollars. Is that all?

A. No, I gave him smaller amounts at various times.

XQ. 1001. How much more?

A. As little as ten dollars at various times.

XQ. 1002. How much more?

A. I don't recall, Mr. Kresel.

XQ. 1003. Did you give him the thousand dollars by check?

A. I do not recall that, but I can look it up and see.

XQ. 1004. If you did, will you produce the check?

A. If I did, I certainly will.

XQ. 1005. Is it a fact that you gave it to him in cash?

A. Possibly I did. He was in New York and he came there crying about his house, to save him from being foreclosed. I will try to look it up and try to locate the date.

XQ. 1006. You did it just because he had to pay a mortgage on his house?

A. Because he lost his job because he tried to get this thing straight with Senator Moses, and I sympathized with the man on that account.

XQ. 1007. I see.

A. Absolutely, and no other reason, Mr. Kresel.

XQ. 1008. When he wrote you sending this letter under date of October 24, 1922: "My dear Colonel: I am enclosing herewith a statement. You understand how I am situated financially. I explained to you that it is necessary for me to have the money at this time. Taking over your work entailed great sacrifice on my part, and you of course are not willing that I should endure any further hardship. It is absolutely necessary that I receive a check from you by return mail. Very truly yours." Was it after receiving this letter that you gave him a thousand dollars to pay his mortgage?

A. I do not recall, but I sent no check by return mail, I can assure you.

XQ. 1009. Is it not a fact that you paid him a thousand dollars on account after you received this bill?

A. I do not recall, Mr. Kresel. I gave it to him in New York when he came with his mortgage and his note to the bank.

XQ. 1010. Won't your books show what you paid him?

A. If I gave him a check they certainly will.

XQ. 1011. And if you gave him cash won't it show, if it is an honest transaction?

A. Possibly not. I may have had it in my pocket and gave it to him, the same as I gave him ten dollars for his fare. If I find it I shall give it to you, Mr. Kresel. I can not do any more than that. And I will be glad to do it, and give you any other amounts. I will be glad to. I have nothing to conceal in that matter.

XQ. 1012. Mr. Metz, you were abroad in the summer of 1921, were you not?

A. 1921, yes.

XQ. 1013. And you went to see your old friends, the Germans, did you not?

A. I went to see——

XQ. 1014. Did you, yes or no?

A. I resent your putting it that way—my friends, the Germans.

XQ. 1015. You went to see your former principals?

A. Certainly, I went to the works. Certainly, I went on a business trip.

XQ. 1016. And you discussed with them the return of the patents here in suit?

A. No, sir, I never discussed the return of the patents. I never thought they would get the patents back.

XQ. 1017. Do you mean you did not discuss with them the return of these patents?

A. I don't think I specifically discussed it with them.

XQ. 1018. Is it only thinking, or do you say you did not?

A. I might have discussed the general proposition, but if I did it was in a general way.

XQ. 1019. I did not ask you what you might have done.

A. I can not answer differently than that.

THE COURT: You will have to say whether you did or did not.

THE WITNESS: I do not know, your Honor. I do not know specifically.

XQ. 1020. Did you not testify under oath that you did discuss it with them?

A. Now you give me——

XQ. 1021. Oh, when you see I have it in writing——

A. Oh, no.

XQ. 1021 (continuing.) You are willing to admit it, are you?

A. No. I beg your pardon. I discussed it in 1920. That is not fair, Mr. Kresel. In 1920.

MR. ANDERSON: Just a minute.

THE COURT: Have you some objection to make, Colonel Anderson?

MR. ANDERSON: I object to that method of dealing with the witness. The witness is trying to testify to various and sundry transactions. Now I felt the witness is absolutely helpless and is entitled to courtesy from counsel.

THE COURT: I am afraid I do not understand you. You think what?

MR. ANDERSON: That the witness is entitled to courtesy from counsel. I have that suggestion.

THE COURT: I think he has had it in full measure, and if you think the witness needs any protection you should come to his rescue.

MR. ANDERSON: No, I do not, but I think at the proper time if the question is improper——

THE COURT: I think Mr. Kresel has shown the utmost restraint, Colonel Anderson, and I shall no longer hesitate to say so.

MR. ANDERSON: Your Honor's judgment will of course control, but I feel that way and I can only address the Court. You are the only person I can address myself to.

THE COURT: But I think the objection is not well taken. I think instead of criticism of Mr. Kresel at this time he is to be commended for the restraint he has shown. The time has come when this witness must answer these questions or abide by the consequences. You have observed him with care. I have observed you observing him. I have observed him throughout. The time has come, and from now on, evasion, will not be tolerated.

MR. ANDERSON: I quite agree with your Honor that evasion is not to be tolerated under any circumstances.

THE COURT: I appreciate your position, Colonel Anderson.

MR. ANDERSON: I was not impressed with the fact that the witness was undertaking to evade.

THE WITNESS: I assure your Honor that I have not evaded.

THE COURT: I can not hear you, Colonel Anderson.

MR. ANDERSON: He was going over a very long record. I do not want to argue with the Court on the subject, but merely to note an objection.

THE COURT: I do not want to discuss it either, because the thing amounts now to a demonstration and not an opinion on my part. So if you can help the witness by suggesting to him what I suggested to him on Saturday and this morning you will be doing the witness a favor—and that is to stop evasion and answer questions, and stop argument. This is not the place for that.

MR. ANDERSON: I quite agree, if your Honor please, and I am not undertaking to testify, nor am I undertaking to control the examination in any respect. I have not interrupted it, I have even refrained from making objection where I thought I should object, because I believe in the utmost latitude. If your Honor thinks the witness is evading I should be very glad to say that the witness should not evade.

THE COURT: This Court will be glad to protect in full measure any witness, as I advised Mr. Metz on Saturday or Friday, unless he undertakes to protect himself. He has not needed protection from aggression of counsel. There is no need of discussing it further, Colonel Anderson.

MR. ANDERSON: I was not doing it, but my duty is to address myself to the Court when the question is raised.

THE COURT: I understand.

MR. ANDERSON: I never argue with this Court or any other Court when it has reached its conclusion.

XQ. 1022. I asked you whether you had not testified that you had discussed with the Germans on your trip abroad the question of the return of these patents to them. Do you say now that you had?

A. In 1920 I did, yes, sir, when I went abroad.

XQ. 1023. In 1920 you said you discussed that?

A. Yes, sir.

XQ. 1024. Not in 1921?

A. I do not recall. In 1920 I discussed it with all the people who had patents here.

XQ. 1025. Did you not also discuss it with them in 1921?

A. Not specifically, I don't think.

XQ. 1026. You were abroad in 1921?

A. And 1922.

XQ. 1027. Now I read to you your testimony before the Shortridge Committee at page 877, as follows: "Undoubtedly our patent laws, in not providing for carrying out invention are to blame for conditions that existed, and in my discussion of this point with the foreign concerns last summer, they conceded this and said that they would be perfectly willing to continue licenses granted under their patents, if their property were returned to them."

A. That is true. That was their statement.

XQ. 1028. Now you were testifying to that in 1922?

A. That is right.

XQ. 1028a. And you state that conversation took place "last summer." That was 1921, was it not?

A. It also took place in 1920.

XQ. 1028b. Well, did it take place in 1921?

A. Apparently, yes; but in 1920, positively.

XQ. 1029. Is it not a fact that, after you had gone abroad and discussed with the Germans the question of the return of these patents to them, that they sent a commission here early in 1922 consisting of Dr. Oppenheimer, Dr. Holdermann and Dr. Wagner to get these patents back, is it not?

A. I do not think that that was the purpose of the commission.

XQ. 1030. Didn't you meet them in New York in your own lawyer's office?

A. I did not. I was in Europe when they came here. I met one of the gentlemen before he sailed from Berlin, Dr. Oppenheimer.

XQ. 1031. Didn't you send them to your own lawyer?

A. I gave Dr. Oppenheimer a note to Mr. Vandiver the night before he sailed.

XQ. 1032. Mr. Vandiver is your lawyer?

A. He was my counsel in the proceedings against the Alien Property Custodian.

XQ. 1033. He was then your lawyer?

A. And still is.

XQ. 1034. And he is in Court here with you now?

A. Yes, sir; as my counsel.

XQ. 1035. Did you testify before the Shortridge Committee as follows: I read from page 883. Talking about dyestuffs, Senator Shortridge, the Chairman, questioning you said: "At the present time is there or is there not competition among the manufacturers?

"Mr. Metz: There is the strongest kind of competition, because everybody is trying to get rid of the stock on hand and turn it into cash."

Did you so testify?

A. Yes, sir; that is a fact.

XQ. 1036. Was it true?

A. Yes, sir.

XQ. 1037. At page 894, you were questioned by the Chairman as follows:

"Mr. Metz, I have been very much interested in your statement. I suppose we all agree that we want to continue the dye chemical industry in America." and you said:

"Absolutely.

"The Chairman: It gives employment to our people and legitimate profit to capital invested and to be invested. Now there was a time when we were, in a sense, almost wholly dependent upon Europe."

And you said:

"The whole world was on Germany; let us put it more concretely.

"The Chairman. Well, I have understood that Switzerland supplied some proportion of these things.

"Mr. Metz: Only a small per cent.

"The Chairman: I have understood that Switzerland manufactured a very considerable quantity.

"Mr. Metz: And they got their crudes and intermediates from Germany.

"The Chairman: Well, then, we will assume as a fact, fixing a time in 1913 and 1914, say—and then you interrupted and said:

"Germany had the world by the throat, absolutely.

"The Chairman: Yes. Now then for reasons which have developed, America has come to be a very important producer of dyes and chemicals. That is true, is it not?

"Mr. Metz: Yes, sir.

"The Chairman: An embargo was effected, resulting from the war and the laws which have existed since the determination of the great war. Now it is charged by many, and believed by many, that there has already grown up and exists today in America what is called a monopoly in this industry. From your knowledge would you say there is or is not a monopoly?"

And you said:

"I would say that at the present time there is not." Was that true?

A. Yes, sir; that was true in my opinion.

XQ. 1038. And that was true of pharmaceuticals?

A. Yes, sir.

XQ. 1039. And of course you are opposed to monopoly are you not?

A. I don't believe in a monopoly in the ordinary sense. I believe there should be free competition.

XQ. 1040. You remember when the Alien Property Custodian sold the Bayer plant and with it twelve hundred German patents; you remember that, do you not?

A. I remember that, yes. It is a matter of information and belief.

XQ. 1041. And you remember at a meeting of the dyes institute and learned that Mr. Matheson who was in control of the Cassella plant here in the United States was selling the Cassella patents to the National Aniline Company, did you not?

A. He claimed, I believe, to have transferred them.

XQ. 1042. You learned that at that time?

A. Yes, sir; that is right.

XQ. 1043. And you saw at that time that that would give the National exclusive control of the manufacture of such products as the Cassella patents covered, did you not?

A. Yes, sir.

XQ. 1044. But you saw the danger of it, did you not?

A. No, sir; I didn't think Matheson had a right to do it.

XQ. 1045. Didn't you see the danger of it?

A. That was not my point.

XQ. 1046. Didn't you so testify before the Shortridge Committee?

A. They would have a monopoly of course, naturally, under the patents.

XQ. 1047. Now, you see you switch again.

A. I am trying to give you my attitude of mind, Mr. Kresel.

XQ. 1048. Didn't you at that time, when you learned of the possibility of these Cassella patents going to the National, see the danger of that, that it would create a monopoly?

A. In those particular products, yes, naturally.

XQ. 1049. Before the Shortridge Committee you testified:

"I was making salvarsan and novocain and I had licenses for various patents covering vat colors; and at that meeting of the institute, a claim was made that Mr. Matheson had transferred the Cassella patents to the National and that they would have exclusive control of the manufacture of such patents as the Cassella patents covered. I saw the danger of this."

A. Yes; that is correct.

XQ. 1050. And when you saw the danger of this, what did you do about it?

A. I spoke to Mr. Garvan about it, if I remember correctly.

XQ. 1051. Oh, you did? You spoke to Mr. Garvan about it. Now, that was in 1921, was it not?

A. I do not recall the date. The records will show.

XQ. 1052. When you spoke to Mr. Garvan about it, was Mr. Garvan then the President of the Chemical Foundation?

A. I do not think it existed at that time, Mr. Kresel.

XQ. 1053. That was before the organization—

A. I would have to look up the date.

XQ. 1054. And that was before the organization of the Chemical Foundation. Mr. Garvan, however, was the Alien Property Custodian?

A. Yes. The dates I do not remember.

XQ. 1055. It was the Alien Property Custodian that had sold these Bayer patents?

A. Yes, sir.

XQ. 1056. And shortly after you talked to Mr. Garvan about the danger that you saw in having such a large number of patents go into the hands of a single manufacturer, do you not recall attending a meeting at which Mr. Choate appeared and outlined the proposed organization of The Chemical Foundation?

A. I do. I well remember it.

XQ. 1057. That was the meeting of the Manufacturing Chemists' Association?

A. Of which I am a member; yes, sir.

XQ. 1058. Of which you were a member. And it is Mr. Joseph H. Choate that you are talking about now, is it not?

A. Yes, the gentleman sitting here.

XQ. 1059. And Mr. Choate explained what it was intended to do about the remaining German patents, did he not?

A. Yes, sir.

XQ. 1060. He explained that the Alien Property Custodian proposed to sell those patents to The Chemical Foundation?

A. Yes, sir.

XQ. 1061. He explained that it was for the purpose of having The Chemical Foundation give nonexclusive licenses on these patents to any qualified American citizen?

A. Yes, sir.

XQ. 1062. Upon equal terms and upon equal rights?

A. Yes, sir.

XQ. 1063. He explained that the United States Government was to have a free license to those patents?

A. I think that was part of the explanation.

XQ. 1064. He explained that they were to be sold for $250,000, did he not?

A. Yes, sir.

XQ. 1065. He explained that Mr. Garvan was to be the President of the Corporation, did he not?

A. Well, I knew he was to be. Whether it was explained at that meeting or not I don't know. But I knew that was going to come.

XQ. 1066. And after you learned what you have just stated of the purposes of the organization of this corporation and of the intended sale to it by the Alien Property Custodian of these patents, you joined the organization and subscribed $50,000 to it?

A. I did at that same meeting, around the table.

XQ. 1067. Now, you knew at that time as much about the value of these patents as you know today, didn't you?

A. I certainly did.

XQ. 1068. If your testimony is true, you knew that the salvarsan patent alone was worth a million dollars?

A. I certainly did.

XQ. 1069. And yet you were willing to become part and parcel of this organization that you knew was to buy the whole kit and crew of them for $250,000?

A. I saw a good thing as a stockholder and was perfectly willing, yes.

XQ. 1070. That is your attitude, is it?

A. That is my answer on that. I had no interest in the Germans.

XQ. 1071. And so, seeing a good thing, you became a stockholder and are still a stockholder of The Chemical Foundation?

A. Yes, I still hold certain shares for three companies.

XQ. 1072. Did you ever receive a dividend on your stock?

A. Not to my knowledge.

XQ. 1073. Wouldn't you know if you had?

A. I am quite sure I have not.

XQ. 1074. You were also a member at that time of the Dyes Institute?

A. The Consolidated Color Company was; yes, sir.

XQ. 1075. You are aware that the Government charges in this case that the American Dyes Institute and its members were in a conspiracy to defraud the Government of this property?

A. I have read the charge.

XQ. 1076. You are one of the conspirators then?

A. I was not on the Executive Committee.

XQ. 1077. I see. You were not on the Executive Committee. When you learned that The Chemical Foundation was about to take over these patents you thought that there was safety in that for the American industry, did you not?

A. It didn't make any difference.

XQ. 1078. I want to know yes or no whether you thought there was safety in that?

A. I did not think it made any difference to the industry, Mr. Kresel.

THE COURT: Will you suspend a minute, Mr. Kresel?

Mr. Galloway, will you come to the Bench?

(Messrs. Anderson, Galloway and Kresel then conferred with the Court, and a short recess was declared).

XQ. 1079. Now, Mr. Metz, as you have been reflecting upon your testimony of the past twenty minutes, has it occurred to you that there is anything about the Deeters transaction that I inquired about that you have not stated?

A. I do not recall anything, Mr. Kresel, that I have not told you.

XQ. 1080. You know Gaston Means, do you not?

A. No, sir.

XQ. 1081. You mean you have never met him?

A. Never met him to my knowledge.

XQ. 1082. Or spoken to him?

A. Never to my knowledge saw him.

XQ. 1083. You know Cyril Bennett, do you not?

A. Yes, sir, very well.

XQ. 1084. You employed him, did you not?

A. No, sir, never employed him.

XQ. 1085. Did you pay him any money?

A. I loaned him money, yes, sir, on various occasions.

XQ. 1086. You endorsed his note to the bank, did you not?

A. When he was with—

XQ. 1087. Yes or no? I did not ask you when.

A. Yes, I endorsed a note for him at one time for the bank.

XQ. 1088. What bank was it?

A. Gotham National, if I remember.

XQ. 1089. Yes, you remember correctly. And how much?

(No answer.)

XQ. 1090. And how much was the note?

A. I do not recall that, Mr. Kresel. I think it was $5,000 for the Dyers Colors Institute, Dyers Trade Journal.

XQ. 1091. Didn't you know that Bennett and Gaston Means made the investigation of this matter which resulted in this case?

A. No, I don't know it, no, sir; only from hearsay I have heard it mentioned.

XQ. 1092. You have heard it.

A. I have heard it rumored, that is all.

XQ. 1093. And you know, don't you, that Gaston Means was a German spy here during the war?

A. I do not know it.

XQ. 1094. Don't you know that it was so testified before the Overman Committee in the Senate?

A. I do not recall such testimony, Mr. Kresel; never read it.

XQ. 1095. Before the Committee of Ways and Means of the House on June 18, 1919, did you testify as follows: "Now, Mr. Chairman, there is another great danger as I view it. The question has been raised of the Chemical Foundation taking over these patents. Well, there is safety in that." Did you so testify?

A. Yes, sir.

XQ. 1096. And this was in June, 1919. You realized then, did you not, that this arrangement that Mr. Choate had outlined at the meeting of the manufacturers for the conveyance of these patents by the Alien Property Custodian to The Chemical Foundation would avoid the very danger that you saw in the transfer of the Bayer patents and the Cassella patents?

A. Yes, sir.

XQ. 1097. That is it would avoid these German patents which had controlled the dye industry, which had permitted Germany to have a monopoly of the dye industry, getting into the hands of somebody else that could monopolize it; is that it?

A. So far as the patents were concerned; yes, sir. That would kill us.

XQ. 1098. And you thought that the arrangement outlined by Mr. Choate for the conveyance of these patents to The Chemical Foundation was an arrangement that was desirable in the public interests, did you not?

A. Yes, for those interested. Yes, sir, in that way.

MR. KRESEL: I ask that the part wherein he says "for those interested" be stricken out.

THE COURT: Read the question and the answer.

(XQ. 1098. Read as above recorded, with the answer thereto).

XQ. 1099. I ask you to answer the question directly.

THE COURT: No, I deny that motion, Mr. Kresel. You may have the question repeated, if you wish, or you may repeat it, but I deny your motion.

XQ. 1100. Did you think that the arrangement was in the public interest?

A. No, not in the general run—did not give that a thought, Mr. Kresel. I thought it was the industry that was interested in the patents.

XQ. 1101. It was the interest of the chemical industry?

A. To that extent, yes, certainly. The American industry.

XQ. 1102. You testified before the Shortridge Committee in 1922 that you were not competent to give the value of these patents, did you not?

A. I can't give all of them. I must have testified that.

XQ. 1103. Did you so testify? If you do not remember I will read it to you.

A. I probably did testify to that. I could not testify to it on all the patents.

XQ. 1104. If you did so testify I want to know when it was you became competent to testify to the value?

A. I knew at once on the salvarsan and novocain patents. Not all of them I could not tell you, Mr. Kresel.

XQ. 1105. I will read to you what you said before the Committee: "I am not competent to discuss the

value of the patents taken over by The Chemical Foundation, but based on Mr. Garvan's statement they would not seem to amount to much." You testified to that, did you not?

A. Based on Mr. Garvan's statement.

XQ. 1106. Now I want to know the time when you became competent to testify as to the values that you undertake to testify here?

MR. ANDERSON: What page is that on, Mr. Kresel?

MR. KRESEL: Page 867.

A. I always was on the salvarsan patent, Mr. Kresel.

XQ. 1107. Listen to what you said about the salvarsan patent in the same connection: "So far as salvarsan is concerned I made a statement before the Finance Committee that on a basis of one million dollars for that patent I could on the basis of the royalty itself, which is only five per cent of the selling price, pay ten per cent for ten years. That patent has about seven more years to run." You remember that?

A. Yes, sir.

XQ. 1108. You did not there undertake to say that in your opinion this salvarsan patent was worth a million dollars, did you?

A. Salvarsan is about $700,000 on a basis of ten per cent for ten years. That is what I testify.

XQ. 1109. You did not there testify in your opinion the patent was worth a million dollars, did you?

A. I testified what stands in there. I did not testify here it was worth a millions dollars; I said the two of them were worth a million dollars.

XQ. 1110. Which two?

A. The neo and the salvarsan together.

XQ. 1111. When you were testifying before this

Finance Committee that you speak of you were testifying about both, were you not?

A. Approximately, yes. Ten per cent for seven years, or ten years, I figured at the time.

XQ. 1112. I am not asking you what the income was. I am pointing out to you that even there you did not testify that in your opinion this one or both of those patents was worth a million dollars, did you?

A. I was not called upon to do so specifically, Mr. Kresel.

XQ. 1113. That is your answer.

A. Yes, sir.

XQ. 1114. But now you say that the two salvarsan patents are worth a million dollars?

A. Yes, sir.

MR. ANDERSON: He said they were worth a million dollars.

XQ. 1115. Were worth a million dollars?

A. Yes, sir.

XQ. 1116. In April, 1919?

A. Yes, sir.

XQ. 1117. You mean they were worth that to you?

A. To any one who had them.

XQ. 1118. And that the Novocain patent was worth $200,000?

A. At least that, I testified, I believe.

XQ. 1119. Will you not be a little more liberal with us? Is it not worth more than that?

A. Only had four years to run, Mr. Kresel. The neo was worth more.

XQ. 1120. You think it was worth over $200,000?

A. Well, the returns show it.

XQ. 1121. I did not ask you about the returns.

A. I think it was worth over that; at least $200,000.

XQ. 1122. Were the salvarsan and neosalvarsan patents worth a million in April, 1919?

A. In my opinion, yes.

XQ. 1123. What were they worth in 1920, in your opinion?

A. They were worth that ever since; worth it to-day in my opinion.

XQ. 1124. So in your opinion the value of these patents has neither increased nor diminished since April, 1919.

A. The royalties accumulating or accumulated, make it worth that in my opinion.

XQ. 1125. Please answer my question?

A. Yes, sir; I think it is still worth that.

XQ. 1126. It has neither diminished nor increased?

A. That is a matter of opinion. They are still worth a million dollars in my opinion.

XQ. 1127. Have they since April, 1919, and the present day been worth more than a million dollars?

A. I should not estimate any more than that. It is a speculation.

XQ. 1128. So that at all times between April, 1919, and the present date, in your opinion, these two patents are worth a million dollars?

A. They still are.

XQ. 1129. Were they ever worth more than a million dollars?

A. I could not say that. I never estimated beyond the returns on them, in an off-hand way.

XQ. 1130. Did you ever estimate that they were worth more than a million dollars?

A. I never went beyond the figure that I would give that much for them at the time.

XQ. 1131. I understand that that is your testimony, that you would have been willing to pay a mil-

lion dollars for them. But did you ever estimate their value to be greater than a million dollars?

A. I never considered it further, Mr. Kresel.

XQ. 1132. Did you ever testify they were worth five million dollars?

A. I might have said so, yes, and they would have been to some folks. They would have been to me if I had them exclusively.

MR. KRESEL: I ask that the answer be stricken out.

A. (continued). I think I did mention that figure once, Mr. Kresel.

THE COURT: Motion granted.

XQ. 1133. Did you not testify before the Committee on Finance of the United States Senate that in your opinion these two patents were worth five million dollars?

A. Yes, they may have been worth that. I think I mentioned that figure once.

XQ. 1134. Now, which is it? Were they worth a million dollars or five million dollars?

A. It would depend upon the time and the conditions what they were worth.

XQ. 1135. I have asked you the time. You have told me that at all times since April, 1919, to the present day there has been no difference in the value of them, have you not?

A. I said I would give a million dollars at any time.

XQ. 1136. Did you not say that?

A. That was my opinion of their value, yes.

XQ. 1137. And yet in 1921 you testified they were worth five million dollars?

A. Even on five they would pay a return, Mr. Kresel.

XQ. 1138. Did you testify that?

A. Yes.

XQ. 1139. What do you want the Court to take now? A million dollars as your testimony or five million dollars?

A. The figures are there. I did not verify them. I think at a million absolutely. That is the figure I swore to I would have paid, Mr. Kresel.

XQ. 1140. What do you want to say now? Were they worth a million dollars or were they worth five million dollars?

A. I should say they are worth a million easily, possibly five. You can verify that figure, as I told you.

XQ. 1141. And you would have been willing to pay five million dollars for these two patents, would you not?

A. Under certain conditions, certainly.

XQ. 1142. If they had been put up by the Alien Property Custodian for sale, you would have been willing to bid five million dollars for them, would you not?

A. It would depend on the conditions, Mr. Kresel.

XQ. 1143. No conditions at all; just the conditions that existed at that time, namely, that there were the patents and there were four licenses that had been issued thereon by the Federal Trade Commission. Under those circumstances would you have been willing to bid five million dollars for them?

A. No, sir. I would have been willing to bid one million with the licenses.

XQ. 1144. I read to you from your testimony before this Committee on Finance given by you in the month of August, 1921:

> "MR. METZ: On the basis of $75,000 and a five per cent royalty and the profit they made here, anybody that paid five million dollars for that patent would have a very cheap bargain, because they would have a monopoly, and with a

monopoly I could on the present output make a great profit. I would gladly have paid five million dollars for it if I could have gotten it."

Did you so testify?

A. Under a monopoly, yes, sir. Under an absolute patent, yes.

XQ. 1145. You knew that with those four licenses issued with the Federal Trade Commission, you could not get a monopoly?

A. Then it was not worth five million dollars. I said if it was so; I so testified.

XQ. 1146. You knew that the Alien Property Custodian could not sell them without their licenses, did you not?

A. But with them I would have paid a million on them. I would not have paid five million.

XQ. 1147. Let us see: If you had bought these patents, you could have imported the products covered by them, if you had wanted to, could you not?

A. Yes, sir.

XQ. 1148. You could have refused to issue licenses under them to anybody that you wanted, could you not?

A. Further licenses, yes.

XQ. 1149. You would have been receiving a five per cent royalty from the four licensees under the Federal Trade Commission?

A. I could have claimed those.

XQ. 1150. That would have paid you a ten per cent differential, would it not, as between you and a manufacturer and those four others?

A. Yes, sir, certainly.

XQ. 1151. How long would it take you with that differential to have driven the others out of the market?

A. Even if I did not drive them out and continued at the same price, it was worth a million dollars.

XQ. 1152. Would you not have had a monopoly if you had bought these patents?

A. If I wanted to exercise it, certainly, Mr. Kresel, and that is what made the value, exactly.

XQ. 1153. So that when you say that these patents are worth a million dollars, you are placing a value on them as a monopoly?

A. No, sir; as they stand today with the licenses.

XQ. 1154. As they stood in April, 1919, not today.

A. Yes, sir, with the royalties in 1919, yes, sir; with the licenses on them.

XQ. 1155. And you admit that if you had gotten them, you could have had a monopoly?

A. I have always said I was against a monopoly on an article of that kind.

XQ. 1156. Do you not admit that you could have had it, if you had wanted it?

A. Any one that bought it could have had it, subject to the licenses.

XQ. 1157. You do not mean to say that the million dollars value which you placed on these two patents was a market value, do you?

A. I mean to say the returns would have——

XQ. 1158. Do you or do you not mean to testify that that is the market value of those patents at that time?

A. What do you mean by "market value," Mr. Kresel?

XQ. 1159. That is just it. I want to know what you mean by it?

A. That it is worth that to any one.

XQ. 1160. I do not know anything about it. What did you mean when you answered Colonel Anderson's question that the fair market value of those patents was a million dollars?

MR. ANDERSON: I did not say "fair market value." I said, "the fair value."

MR. KRESEL: "Fair value;" excuse me.

MR. ANDERSON: I did not say "market value."

MR. KRESEL: Excuse me. I stand corrected.

XQ. 1161. Did you mean to testify to the fair market value or the fair value?

A. To the fair value to anyone that bought those patents.

XQ. 1162. Did you mean to testify to the fair value or the fair market value?

A. Fair value, I should take it, to anyone.

XQ. 1163. You know, do you not, that there is no market value of patents?

A. In the ordinary sense, certainly.

XQ. 1164. There is or is not?

A. There is not, certainly; I know that.

XQ. 1165. Now let me read to you the question that Colonel Anderson put to you. I read from page 1719:

> "Q. 148. I will ask you this question: Basing your knowledge upon your experience as an importer and as a merchant in this business and other knowledge which you have described, and your manufacturing experience, your knowledge of the profits of this business, including the profits of sale and manufacture, and from your familiarity with market conditions which you have described up to April 10, 1919, what in your opinion was the fair market value of patent No. 986,148 which you have described as covering salvarsan, and re-issue patent No. 13,848, which you have described as covering neo-salvarsan, on April 10, 1919?"

Do you remember that question?

A. I do recall it from the record.

XQ. 1166. Now then, do you still say that the fair market value of these two patents was one million dollars in April, 1919?

A. I say the fair value of these patents. There was no market value, of course.

XQ. 1167. And what you mean by that is that you would have been willing to pay that for them?

A. Yes, sir; gladly.

XQ. 1168. If you had bought these patents, you would have been in a position to fix any price for the product that you pleased, would you not?

A. Not with the license outstanding.

XQ. 1169. With the ten per cent differential you have already told me that you could drive those out of the market, could you not?

A. I do not believe the ten per cent would have made the difference.

XQ. 1170. Well, if you could import from Germany, as you would have imported——

A. I would not have imported, Mr. Kresel.

XQ. 1171. As you could have imported, you could have driven your competitors out of business here, could you not?

A. That would depend upon how much cheaper they could manufacture.

XQ. 1172. Well, you know they manufactured cheaper, don't you, over there, than here?

A. I am speaking of the American manufacturer.

XQ. 1173. No, no, I am speaking of the German, if you please.

A. I never had in mind closing American plants and taking German stuff at that time.

XQ. 1174. I didn't ask you that. Please listen to my question. You know, don't you, that the Germans produced this article at a much lower price than the Americans can?

A. I don't know it today, Mr. Kresel.

XQ. 1175. Well, did you know it in 1919?

A. No, sir; I did not know it.

XQ. 1176. Did you know it in 1920?

A. No, sir.

XQ. 1177. When you were abroad in 1920 and 1921, don't you know what they were selling them at?

A. For export, at much higher than the market price in Germany and higher than our price here in some instances.

XQ. 1178. You mean that you are now importing from Germany and paying more for the product than you could buy it here for?

A. With the duty, yes; more than we could make it for here; the small amounts I have imported.

XQ. 1179. And you are importing it from your former principals?

A. I am only——

XQ. 1180. You are importing it from your former principals?

A. I am not importing. I had imported two lots, special orders.

XQ. 1181. Of course you knew, didn't you, that at the price you paid for these patents, it would eventually go back to your German friends?

A. Oh, no, it wouldn't. Why should it?

XQ. 1182. Didn't you think that the money would be returned to them by the Government?

A. I had no reason to form an opinion.

XQ. 1183. Had you never thought of it?

A. I never thought of that. Our claims against Germany would even that up.

XQ. 1184. You mean that when you were considering the value of these patents it never occurred to you that no matter what you paid for them, the Germans would get what you paid?

A. I had no such thing in mind, Mr. Kresel.

XQ. 1185. No such thing; that was farthest from your mind?

A. I didn't give it a thought. The question wasn't up.

XQ. 1186. Well, your arrangement with the Germans still continues?

A. To what extent, Mr. Kresel?

XQ. 1187. I don't know to what extent. Your exclusive license, you told us this morning, still continues?

A. Yes, sir.

XQ. 1188. Your agency still continues?

A. Yes, sir.

XQ. 1189. And when you started manufacturing salvarsan here, you did that contrary to your arrangement with the Germans, didn't you?

A. On the contrary, with their permission, when I started manufacturing under the patent.

XQ. 1190. Contrary to your contract, didn't you?

A. The contract was amended and I had the right to do it in 1916.

XQ. 1191. It was contrary to your written contract of 1912, was it not?

A. There was a change in the contract.

XQ. 1192. Was it contrary to the written contract of 1912?

A. It was not under the terms of the 1912 contract. It was a new contract, a new arrangement, an amendment thereto, if you put it that way.

XQ. 1193. Did not the 1912 contract prohibit you from manufacturing salvarsan here?

A. I couldn't manufacture salvarsan. The patent prohibited me from doing it. I had no right to until I got permission.

XQ. 1194. Did not the terms of your contract prohibit you from manufacturing?

A. It didn't mention the fact that I couldn't manufacture. It mentioned that I was agent for their goods.

XQ. 1195. When you were manufacturing here,

you expected to have to account to your Germans for doing that, didn't you?

A. No, sir; that was never mentioned.

XQ. 1196. Didn't you so tell Mr. Choate when he was examining you?

A. Possibly that might have happened later on, but there was no mention at the time, Mr. Kresel.

XQ. 1197. I didn't ask you anything about any particular time. Didn't you tell Mr. Choate, when he was examining you in the office of the Alien Property Custodian, that you expected to have a severe session with the Germans after the war for making salvarsan at all?

A. I do not recall using those words, Mr. Kresel. I may have said something of the kind.

XQ. 1198. Let me read it to you.

A. I should be glad to have you.

XQ. 1199. I read from the stenographic report of your examination, page 22, as follows. The date is September 23, 1918. Question by Mr. Choate:

> "Mr. Metz, I can very easily see why, as long as you were under the contract of 1912, you kept the pharmaceutical and general business separate. But what was the point after you had them both?"

And your answer was:

> "I had a factory in Brooklyn, Herman A. Metz, doing pharmaceutical work. That building belonged to me and that was a separate thing entirely. You see the reason for that"——

And then Mr. Choate interposed by putting this question:

> "You are quite sure that that was not done with a view to making the accounting easier?"

And your answer was:

> "No, nothing whatever to do with that. There can not be any accounting on that now. After the war, I think I will have a severe session for making salvarsan at all."

A. That probably was true at that time.

MR. ANDERSON: Where are you reading that from?

MR. KRESEL: I am reading from a report of an examination of Mr. Herman A. Metz before Mr. Joseph H. Choate in the office of the Alien Property Custodian on September 23, 1918.

MR. ANDERSON: Is it in the official record? I have never seen it.

MR. KRESEL: It is an official record of the Alien Property Custodian, I suppose, or a copy of it.

XQ. 1200. Your estimate of a million dollars as the value of these two patents was based upon the assumption that you would have these patents and that you would be under no obligation to license anybody; isn't that right?

A. Quite right, sir.

XQ. 1201. And upon the assumption that you would be under no obligation to give to the United States a free license on all those patents; isn't that right?

A. Yes, that is true, naturally.

XQ. 1202. And upon the assumption that you would not be limited to a six per cent return upon your investment?

A. Certainly.

XQ. 1203. And upon the assumption that you would not have to devote all above six per cent for the advancement of the chemical industry?

A. Certainly.

XQ. 1204. Now I am going to ask you to tell this Court what in your opinion those two patents were worth, upon these conditions; namely, that the purchaser had to issue non-exclusive licenses on these patents to all Americans upon equal terms and upon equal royalties; that the purchaser had to give a free

license upon all the patents to the United States Government; that the purchaser had to give away for public purposes everything that was made above six per cent on the investment?

MR. ANDERSON: If your Honor please, I have to note an objection to that question, because it does not state the facts in the record and it is not based upon any facts shown in the record. It is a hypothetical question, and of course it must be predicated upon facts. It is contended here, and will be very earnestly contended in this case, that the charter is not susceptible of any such construction; and that being the case, a question predicated upon that construction of the charter, no part of which question we think can be sustained by the language of the charter itself, would be of course an improper question. I therefore subject the objection to the question.

MR. KRESEL: I desire to be heard, your Honor. I deny entirely Colonel Anderson's view of what is proper in a hypothetical question. I purposely refrained from assuming those to be the facts. This man has taken it upon himself to qualify as an expert on the values. I am asking him to assume certain conditions. Whether those conditions prevailed here or no I am not discussing with this witness, that is a matter that we have to discuss with your Honor. But I am entitled to have this expert assume a state of facts and give an answer thereon.

MR. ANDERSON: I would say in reply that I think a hypothetical question must be predicated upon a state of facts appearing in the record where it is not taken in advance of the hearing on the promise to prove those facts to exist, and then if they are not proved the hypothetical question goes out, along with the answer. In the next

place, I must take exception to the suggestion of counsel that the witness has assumed, as I think he said, to qualify as an expert. The witness is here under subpoena and he was asked questions by counsel on direct examination which we assume qualified him as an expert.

THE COURT: Tell me this, Colonel Anderson. Suppose it should be determined, though I am not now determining it, that the charter of this defendant is open to such construction, which you deny, would the answer to Mr. Kresel's inquiry then be pertinent to the issues in this case?

MR. ANDERSON: I will put it this way, your Honor: I do not venture to suggest the question to counsel, but he might say, assuming so and so to be the truth, what then would be your idea of the value of the patents. But if it is put as a fact, then it must appear of record in order to be a proper question.

MR. KRESEL: I think, Colonel, if you will permit the stenographer to read the question you will agree with me it is not open to the criticism you have just made.

THE COURT: Do you care to have it read, Colonel Anderson?

MR. KRESEL: I have assumed, and I will ask him to assume that. If it does not meet that, I will correct it.

(XQ. 1204 read by the reporter as above recorded.)

MR. ANDERSON: That was under these conditions.

THE COURT: As I understand, Mr. Kresel is ready to make it correspond to your ideas.

MR. KRESEL: May I reframe the question?

THE COURT: Yes.

XQ. 1205. Mr. Metz, I want you to assume for the

purposes of this question that the purchaser of these patents would have had to issue non-exclusive licenses thereon to any qualified American citizen, that he would have had to issue such licenses upon equal terms and equal royalties to all, that he would have had to issue a free license upon all the patents to the United States Government, that he would have been entitled to retain of all the profits made only six per cent upon his investment, and that he would have been obligated to devote everything above six per cent to the advancement of the chemical industry of the country. Upon those assumptions will you tell the Court what in your opinion those patents were worth on the 10th of April, 1919?

MR. ANDERSON: The objection to the form of the question as not predicated upon a fact is removed, and therefore it brings directly before the Court the point which I wish to submit by way of objection. If the question is predicated upon a state of facts in the record it is clearly material; if the question is predicated upon a state of facts not in the record, we can go on guessing eternally, and it is clearly immaterial. Therefore it brings us to the direct issue that it is immaterial and irrelevant because it assumes as a predicate for the answer conditions which do not exist in this record and did not surround this sale.

THE COURT: That objection is based on your construction of the charter, as I understand it.

MR. ANDERSON: And upon the full record.

THE COURT: The answer may be taken under our general rule.

MR. ANDERSON: Will your Honor permit me to add something, because I wanted to get that definitely before you?

THE COURT: Yes.

MR. ANDERSON: This is more a reason for

supporting it than an additional suggestion. I think it becomes an important question in this case that to have divested a patent, which is nothing but an exclusive right granted by the Government, of the exclusive right, which was its character, as I indicated in my opening statement, and withdraw from it those rights and then ascertain its value, essentially assumes a confiscation of its essential elements or a destruction of its essential elements before you sell it, and that of course would not be a sale within the contemplation of the law. That is enlarging to some extent the direct point that I make.

THE COURT: I understand that contention from the standpoint of your previous objection. I will take the answer under our general rule and determine that later.

A. The value would be very largely destroyed and I should not have bid for it.

THE COURT: Are you practically through with your cross-examination?

MR. KRESEL: No, your Honor, I shall probably be another hour with this witness.

THE COURT: The time for adjournment has arrived. Colonel Anderson, at the time of an objection made by you this afternoon I probably displayed some irritation. I want to assure you, Colonel Anderson, such irritation was not due to your objection or the manner of its making. You were strictly within your rights in making an objection and the manner of its making is not open to criticism. I am sorry, sir, if my manner indicated the contrary.

MR. ANDERSON: I thank your Honor very much.

(Whereupon, at 3.05 o'clock P. M., Standard time, adjournment was taken until tomorrow, June 26, 1923, at 8.30 o'clock A. M., Standard time.)

FIFTEENTH DAY.

Wilmington, Delaware,
June 26, 1923, at 8.30 o'clock A. M.,
Standard Time.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

HERMAN A. METZ resumed the stand.

CROSS-EXAMINATION (Continued).

By MR. KRESEL:

XQ. 1206. Mr. Metz, you testified that in 1919 you paid $34,711.16 as a royalty to the Federal Trade Commission under the salvarsan license?

A. I have the figures here, yes, sir.

XQ. 1207. Will you tell me, please, when you made that payment?

A. (Witness refers to papers).

XQ. 1208. Do you think you can give us that information?

A. I am looking for it, Mr. Kresel, if you please, just a moment. I have here royalties paid that I testified from, the figures.

XQ. 1209. Do you find the item that I call your attention to?

A. What is the amount, do you say—thirty-four thousand?

XQ. 1210. $34,711.16, you testified?

A. Yes, sir, I have got here royalties on salvarsan and neosalvarsan, 1919, $34,711.16.

XQ. 1211. My question is when the payment was made, if you can give me that?

A. When the payment was made? I have got all

the receipts here. I have two receipts here from the Alien Property Custodian for about that amount, Mr. Kresel. I suppose that was taken from my books, my statement. That is $34,000 something on there, as I figure it offhand. That would probably be the same item, as I take it, with a possible difference in figures of a small amount. I presume those are the receipts for those two payments make that total. There is a slight difference there in the amount. I do not see just how much it is. There were always slight adjustments on these matters.

XQ. 1212. Subject to any further correction that you may desire to make, then, I understand your testimony to be that the sum of $34,711.16 which you paid for royalties in 1919 was paid in two instalments, for which you produce these two receipts?

A. One for salvarsan and one for neosalvarsan, I think it is, Mr. Kresel.

XQ. 1213. Now, all I am interested in are the dates. One of these receipts is dated March 7, 1919, and is for $17,807.84, is that right?

A. Yes, sir.

XQ. 1214. And the other is dated July 22, 1919, and is for $16,241.25?

A. Yes, sir; shows the 1919 payments.

XQ. 1215. You know, do you not, that the Novocain patent expired in February of this year?

A. Yes, sir.

XQ. 1216. Now, Mr. Metz, I want you to assume for the purposes of this question that the purchaser of the novocain patent, which you valued at $200,000, according to your testimony, would have had to issue non-exclusive licenses thereon to any qualified American citizen, that he would have had to issue such licenses upon equal terms and equal royalties to all, that he would have had to issue a free license upon all the patents to the United States Government, that the

royalties that he was to charge would have to be reasonable royalties, that he would have been entitled to retain of all the profits made only 6 per cent upon his investment, and that he would have been obligated to devote everything above 6 per cent to the advancement of the chemical industry of the country. Upon these assumptions, will you tell the Court what in your opinion those patents were worth on the 10th day of April, 1919?

MR. ANDERSON: I ask leave, if your Honor please, to submit an objection to that question on the ground that it assumes facts which are not facts in this case and is not complete in the statement of the alleged evidence upon which it is predicated and that it is obviously predicated upon an erroneous construction of the evidence, and especially the charter of the defendant corporation; and therefore, in addition to the general objection which I have had placed upon the record, I wish to note this special objection.

MR. KRESEL: That is the same question that your Honor passed on just as we were adjourning yesterday. I purposely read from the question just as I put it yesterday, which your Honor allowed.

MR. ANDERSON: It is probably fair to Mr. Kresel and to the Court that I should state it occurs to me that there are certain defects in the question which I think I should point out, perhaps, in addition to the contention I made yesterday, which I need not repeat now. The statements of assumed facts in the question are not drawn out by the record or especially the charter.

THE COURT: Is this the same question, with respect to the novocain patent——

MR. KRESEL: That I put yesterday with respect to salvarsan. Exactly the same.

MR. ANDERSON: I agree to that. My objection is really sufficient, but in view of the fact that some question may be raised to which I did not point out the specific points of my objections, I want to do that in order to make it more specific. The following objections occur to me now, without limiting my general objection.

I desire to say in the first place the purchaser of these patents was not obligated to issue nonexclusive licenses thereon to any qualified American citizen. The charter does not contain any such provision. Second, that he would have had to issue such licenses upon equal terms and equal royalties to all. I believe you inserted "reasonable" there—reasonable royalties to all. I think the evidence negatives that situation and the record does not bear out that construction. That he would have to issue a free license on all patents to the United States Government. There is no such obligation in the charter, as we contend. That he would have been entitled to retain, of all the profits made, only six per cent upon his investment. That there is nothing to that effect in the charter. The limit of the amount that can be paid upon the stock of the corporation is six per cent, but there is no limit upon the expenses which can be incurred by the corporation in the way of salaries or otherwise, and therefore a purchaser, if he had owned this corporation, if he had bought under the charter of this corporation, would have been at liberty to allow himself any amount of compensation that he saw fit for his services, and the directors of this corporation can do likewise.

Therefore, the limitation there imposed is only as to the net profits distributable upon the stock, and does not in any way affect the rights of the parties. I do not want to argue this now, but I think it is due I should state this.

The next point is that he would have been obligated to devote anything above six per cent to the advancement of the chemical industry of the country, and, as I indicated in my opening statement, while there is language of that kind in the charter, it is so utterly indefinite that it is incapable of enforcement.

THE COURT: As I understand you, you contend and urge that there is a difference between this question and what it would be if he were asked what he would give if it were bought under the terms and conditions of the charter.

MR. ANDERSON: No, sir. Of course, I would object to that as an illegal question, because he would have to construe the charter, and no layman can do that.

THE COURT: I do not mean a question——

MR. ANDERSON: I understand what you mean.

THE COURT: But your main objection, as I understand you, is that this involves a construction of the charter with which you do not agree.

MR. ANDERSON: With which I do not agree and which I claim to be entirely unjustified by the charter itself.

THE COURT: Yes.

MR. ANDERSON: And, in the second place, that it does not fully state the evidence in the case, for the reason that there is evidence here at least of one case where an exclusive agency was conferred. There is evidence here that there was an accruing income on these patents, and all of those matters should be stated; in a hypothetical question the substantial elements of the evidence must be stated.

I want to state, if your Honor please, that I have elaborated my objection to the end that the Court may understand and counsel may under-

stand its general character. I do not mean to limit it by that elabbration.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: No, your Honor.

THE COURT: I think it states the evidence substantially. It probably does not incorporate the fact disclosed by the evidence which was called to my attention by your last remark, namely, that there were accruing royalties on some of these patents. I do not recall offhand whether that was true with respect to novocain or not.

MR. ANDERSON: Yes, that is true.

MR. KRESEL: Your Honor will excuse me, but I was talking to someone and did not get your last remark.

THE COURT: My remark was this, Mr. Kresel: that I think the question represents substantially the fact, with this exception, which was just called to my attention by Colonel Anderson, that the evidence does not disclose, as I recall, that there were accruing royalties on novocain, which fact is not embodied in your question.

MR. KRESEL: I understand that; but there is no question about those royalties, since the purchaser did not get them. That is the reason I did not include it. I quite understand that that is the contention of the Government.

THE COURT: Have you shown that those royalties were released in any way, or merely not purchased?

MR. KRESEL: They were not only not purchased, but we have not had a chance to show that they were released. But your Honor will recall that in my opening I read to your Honor a letter from the Foundation to the Alien Property Cus-

todian, waiving any claims to those royalties whatsoever.

THE COURT: You may take the answer.

XQ. 1217. Mr. Metz, would you like me to repeat the question?

MR. ANDERSON: I do not understand your Honor's saying that this conforms to the facts as in any way expressing a view upon the charter.

THE COURT: No, I am not taking his word for that.

MR. ANDERSON: I do not want to argue that.

A. I made no calculation on that basis, Mr. Kresel.

XQ. 1218. I want you to make a calculation right now and tell the Court what, in your opinion, under those conditions stated in my question, the value of that novocain patent was?

A. Under those conditions I should not want the patent.

XQ. 1219. I did not ask you that?

A. I have no way of forming a conclusion as to what it would be worth without having all the facts, Mr. Kresel.

XQ. 1220. You stated yesterday in answer to a similar question with reference to the salvarsan and neosalvarsan patents as follows:

"The value would be very largely destroyed and I should not have bid for it."

Is that your answer to the present question?

A. Yes, sir, that would be the same answer to that question.

XQ. 1221. You testified that you were the owner of two trade-marks, a trade-mark covering salvarsan and a trade-mark covering novocain.

A. And neosalvarsan; three trade-marks.

XQ. 1222. And neosalvarsan.

A. Yes, sir.

XQ. 1223. Of course, you were not the owner; the

owner according to the papers that counsel introduced here was the Farbwerke-Hoechst?

A. Yes, my company, naturally, in which I own all the stock; now The Laboratories.

XQ. 1224. You stated that those trade-marks were seized by the Alien Property Custodian?

A. Yes, sir, they were demanded.

XQ. 1225. Is it not the fact that they were seized by the Alien Property Custodian after he had seized the stock of the Farbwerke-Hoechst Company as German property?

A. I should assume so, because he first seized——

XQ. 1226. I do not want you to assume, please.

A. It must be so, because he seized the property first.

XQ. 1227. I do not want your reasons. I simply want to know whether it is the fact.

A. To the best of my knowledge, yes.

XQ. 1228. You have testified that in your opinion the value of the salvarsan and neosalvarsan trade-marks was a million dollars?

A. Yes, sir.

XQ. 1229. A round million.

A. Yes, sir.

XQ. 1230. I want you to assume, for the purposes of this question, that the purchaser of those trade-marks would have had to issue non-exclusive licenses thereon to any qualified American manufacturer to use the same; that he would have had to issue such licenses upon equal terms and equal and reasonable royalties to all; that he would have had to issue a free license upon those trade-marks to the United States Government; that he would have been entitled to retain of all the profits made on the said trade-marks only 6 per cent upon his investment; and that he would have been obligated to devote everything above 6 per cent to the advancement of the chemical industry of the country.

Upon those assumptions, will you tell the Court, what, in your opinion, those salvarsan and neosalvarsan trade-marks were worth on the 10th day of April, 1919?

MR. ANDERSON: Will your Honor permit me to renew the objection stated to the previous question of a similar character on the same grounds, in addition to the general grounds stated, and on the further grounds that the laws of the United States do not permit the licensing of a trade-mark. Therefore, the assumption is illegal.

THE COURT: I will hear you on the last objection, Mr. Kresel.

MR. KRESEL: I do not agree with counsel that there is any such law. On the contrary, not only is there no such law, but the fact is that The Chemical Foundation did license the United States Government to use those very trade-marks, as we shall show.

THE COURT: I have this difficulty: my impression with respect to the law of trade-marks was this: that it was an evidence of the good-will of the manufacturer; it was the brand, so to speak, indicating that it was manufactured by a certain person, and thus indicated a quality which was reflected in the good-will or good-will and quality, whichever way you may view it.

Possibly, this question raises more particularly one of the fundamental questions involved in this case, if my view of the law be correct, whether what was undertaken to be done by The Chemical Foundation with respect to trade-marks was not in reality a destruction and actual confiscation of the trade-marks—not of the patents but of the trade-marks; and if you care to give me the benefit of your views on that at the present time, I shall be glad to have them, Mr. Kresel.

MR. KRESEL: Well, I think your Honor is absolutely correct in the view that a trade-mark is a representation that the merchandise sold thereunder is the product of a particular manufacturer.

One of two things is true. Either these trade-marks were of no value to The Chemical Foundation, because they could not properly represent that merchandise manufactured by somebody else and using that trade-mark was the merchandise that was manufactured by the persons or concerns that owned those trade-marks originally; or else, if they used them at all, whether by license or otherwise, it was upon the theory that they stepped into the shoes, so to speak, of the former owners of the trade-mark, and therefore had a perfect right to represent that the merchandise offered under that name was the merchandise of the successor of the original owners.

What I am trying to get from this witness is what, in his opinion, the value was of those trade-marks under the conditions that I have laid down, whether those conditions were properly exercised or not. That is a matter that your Honor has to determine.

THE COURT: But is it a question that can be answered?

MR. KRESEL: I think so, sir. Indeed, I have no doubt of it.

MR. ANDERSON: May I supplement my statement, if your Honor please. In view of your Honor's inquiry and the reply of counsel, I think it is proper that I should say, without at this time undertaking to argue the question, that the Government will contend in this case that while the Government could have seized these trade-marks to prevent their being used during the war, just as it could any property or right, for its protection,

that any assignment of these trade-marks with a general obligation to give anybody the right to use them, was in effect a cancellation of the trade-mark; and therefore, the question is predicated upon a legal assumption which essentially destroys the thing which is sought to be valued and counsel is clearly asking this witness to assume a state of facts which answers itself.

Therefore, in addition to the other objections, the contention of the Government is that the counsel for the defense is asking the witness, in effect: Suppose the Government had confiscated and cancelled by act of Congress every one of the trade-marks here involved, what would you then think they were worth?

THE COURT: Is it not the law that a trade-mark can not be assigned apart from the business?

MR. KRESEL: No, your Honor. That is not my understanding.

THE COURT: If the witness can answer the question, we will put it of record, reserving the legal questions. If he can not answer it, let him say so, or let him answer it on various assumptions, so as to complete the question.

XQ. 1231. Have you the question in mind?

A. Yes, sir. I should have opposed any such transfer to an American owner of an American trade-mark.

MR. KRESEL: I ask that that be stricken out.

THE COURT: That does not answer it. Suppose we have the question repeated.

XQ. 1232. Do you want the question re-read?

A. I know the question. I understand the question.

XQ. 1233. You do know the question?

A. Yes. Assuming those were the conditions, I would not give anything for it.

XQ. 1234. Now without repeating the question at length, I ask you the same question with reference to the novocain trade-mark, and is your answer the same?

MR. ANDERSON: Your Honor will note the same objection in each case?

THE COURT: Yes, and an exception noted.

A. The same answer. It would have been destroyed.

XQ. 1235. What did the Farbwerke-Hoechst Co. pay to the Germans for the assignment of the salvarsan trade-mark?

A. They paid nothing at the time, except the continuation of the business.

XQ. 1236. They paid them nothing. That is all I want to know. What did the Farbwerke-Hoechst Company pay the Germans for the assignment of the novocain patent?

A. Same conditions. Carried it on.

XQ. 1237. Mr. Metz, what in your opinion is the value of a patent upon which the owner has to issue non-exclusive licenses?

A. Based upon earning capacity. I would have to know the earning capacity.

XQ. 1238. Has it any value?

A. Yes, sir.

XQ. 1239. In your opinion?

A. Yes, sir.

XQ. 1240. Take the salvarsan patent and the neosalvarsan patent, which I understand you are considering together——

A. Yes, sir.

XQ. 1240 (continuing). ——and tell me what in your opinion those two patents were worth on the 10th day of April, 1919, to a purchaser who would have had to issue non-exclusive licenses thereon?

A. Based upon the earnings, under those conditions, and the royalties, they were worth what I said, easily.

XQ. 1241. They were worth what?

A. The amounts I said, at least a million dollars, with their earnings under the same conditions as you stated.

XQ. 1242. Is it not a fact that in your opinion a patent on which the owner had to issue non-exclusive licenses was worth nothing at all?

A. It depends upon the income.

XQ. 1243. I am talking now about these salvarsan patents?

A. He could fix the income and it would be worth accordingly, Mr. Kresel, in my opinion.

XQ. 1244. Have you not testified that the patents which are involved here, owing to the fact that non-exclusive licenses had to be issued thereon were worth nothing?

A. I said the value had been largely diminished, but I would not have bid on them is what I said, I think.

XQ. 1245. Have you not testified that they were worth nothing?

A. I do not think I so testified, Mr. Kresel. I should like to be shown.

THE COURT: Do you mean in this case, Mr. Kresel?

MR. KRESEL: No, your Honor, before a Congressional Committee.

THE WITNESS: Oh, well——

THE COURT: Did you understand the question to be that, Mr. Metz?

THE WITNESS: I understood the question. He said I testified so. Possibly. I do not recall.

MR. ANDERSON: May I ask, to make it per-

fectly clear, whether this was before the Congressional Committee that he testified?

MR. KRESEL: The Court has asked and I answered it.

MR. ANDERSON: I did not hear it.

THE COURT: Mr. Kresel said he referred to testimony elsewhere than here, and the witness said he understood the question.

MR. ANDERSON: I see. I could hear very little of the evidence.

XQ. 1246. What is your last answer?

A. I do not recall such testimony, unless you show it to me.

XQ. 2147. Before I read you your testimony I want to ask you the same question as to a trade-mark. Have you not testified that a trade-mark which was not exclusive was worth nothing?

A. Certainly. A trade-mark is exclusive in my opinion, and must be necessarily.

XQ. 2148. Then you have so testified?

A. I assume if I was asked that question I should have answered in that way. A trade-mark is exclusive, naturally.

XQ. 2149. Now I read to you from page 879 of the record before the Sub-Committee of the Committee on Judiciary of the United States Senate. At the bottom of the page, the question by the Chairman:

"You claim to own the trade-mark of 'salvarsan?'

"MR. METZ: I claim to own the trade-mark on salvarsan—salvarsan, neosalvarsan, and novocain. They were transferred to me by the Germans before we went into the war.

"MR. GARVAN: What is the value of a non-exclusive right in a trade-mark?

"MR. METZ: Of a non-exclusive?

"MR. GARVAN: Yes.

"MR. METZ: Well, I don't believe you can

grant a license in an exclusive trade-mark. A trade-mark refers to a certain thing.

"MR. GARVAN: We can not give an exclusive license.

"MR. METZ: Well, why interfere with me, then, if you can not?

"THE CHAIRMAN: You claim exclusive ownership in the trade-mark?

"MR. METZ: I claim exclusive ownership in the trade-mark. It is worth nothng if it is not exclusive. It must be exclusive, or it is worth nothing.

"THE CHAIRMAN: What is that?

"MR. METZ: It must be exclusive, or it is worth nothing.

"THE CHAIRMAN: And that is practically so in respect to a patent.

"MR. METZ: Yes."

Did you give that testimony?

A. I suppose I did; yes, sir. I am quite sure I did. That is my opinion.

XQ. 2150. Mr. Metz, what in your opinion were the salvarsan and neosalvarsan patents worth on the 10th of April, 1919, if in fact some person had an exclusive license to manufacture under them in the United States?

A. Exclusive license?

XQ. 2151. Yes, sir?

A. At least five million dollars—exclusive.

XQ. 2152. I will repeat the question. What in your opinion were those two patents worth to a purchaser on the 10th day of April, 1919, if he had to take them subject to an exclusive license in the hands of someone else, to manufacture under them in the United States?

A. What do you mean, exclusive license to somebody else?

THE COURT: I am not sure that I understand your question.

MR. KRESEL: May I reframe it, sir?

THE COURT: Yes. I assume you mean an outstanding?

MR. KRESEL: Yes, sir.

THE COURT: Very well.

XQ. 2153. Did you understand that?

A. I don't know how——

XQ. 2154. Well, let me try to put it again. What in your opinion were those two patents worth on the 10th day of April, 1919, to a purchaser who had to take them subject to an outstanding license in the hands of a third party, giving that party an exclusive right to manufacture under the patents in the United States?

MR. ANDERSON: In addition to the objections already urged to this evidence, which apply to each question, I wish to add the additional objection that there is no evidence in this case that there was any exclusive license outstanding. I know that there was evidence yesterday—and I wish to say that so we may not entirely misunderstand the evidence—by Mr. Metz that he claimed an exclusive license under a verbal right from the owners in Germany before these patents were seized; but that could give no right in the United States unless it were a written assignment or license recorded in the Patent Office, and therefore there can be no such condition existing upon the evidence in this case, and there is no such evidence in the record.

THE COURT: I have a note to make inquiries about three or four matters, of which this is one: I was not sure whether the testimony had so far disclosed that the property seized by the Alien Property Custodian was, as to this patent, subject to the rights of Mr. Metz and his company. There is no evidence with respect to that, is there?

MR. ANDERSON: I will reply to that question.

As I understand it, the witness was asked yesterday if he claimed a license to use these patents, acquired prior to the war. He said he got a verbal right to manufacture in 1916 and that he did claim a license. There is in this case no evidence that such license was ever recorded or that it was in writing, which would be necessary in order to make it good against a purchaser of that patent. And therefore upon that state of facts and upon that evidence, whatever the witness may have claimed, if he wants to say subject to the claim of this witness, why, that is all right.

THE COURT: May I ask two questions?

MR. ANDERSON: Yes, sir.

THE COURT: The first is that my recollection of the testimony is that that agreement permitting Mr. Metz or his company to manufacture was in writing. I may be mistaken about that.

MR. KRESEL: I have it right here; may I read it to your Honor?

THE COURT: No. Any way, I was under that assumption. The second is, whether it was in writing or not and whether recorded or not, it is such an agreement as may be enforced against the parties though not recorded, is it not? My understanding of the recording acts, and I may be in error, is that they are for the protection of other parties than those to the document.

MR. ANDERSON: Yes. The agreement between Mr. Metz and those companies abroad might be enforced, assuming there is no Statute prohibiting the enforcement.

THE COURT: Then that would be enforceable. My next thought is this: If that is enforceable against the German owners, when the United States makes the seizure it does not get any broader or greater rights than the German owner had, I assume.

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MR. ANDERSON: I would say that it would get whatever right was existing of record in that patent. The Alien Property Custodian by virtue of the seizure, I take it, becomes in legal effect a purchaser for value, and Mr. Metz, if he has not recorded any rights there, they stand in the German so far as the record is concerned.

THE COURT: That raises a question I do not want to determine now. So I will take the answer under our general rule. Mr. Kresel, will you repeat the question.

MR. KRESEL: I will ask the stenographer to read it.

(XQ. 1254 repeated as recorded above.)

A. I have not made such calculation, but it would be based upon the earning power and what had been accumulated in the way of royalties.

XQ. 1255. Would it be worth anything other than the royalties that had accumulated?

A. Yes, the continuing business thereafter and its earning capacity.

XQ. 1256. What is that?

A. The continuing business thereafter and its earning capacity.

XQ. 1257. But you do not get the question, Mr. Metz.

THE COURT: Won't you reframe that question once more, Mr. Kresel?

MR. KRESEL: Yes, sir.

XQ. 1258. My question is what in your opinion was the value of those two patents on the 10th day of April, 1919, to a purchaser who would have to take them subject to an outstanding license held by a third party, giving that third party the right to manufacture under the patents in the United States. Do you understand my question?

A. Yes.

XQ. 1259. All right. Will you answer it.

A. To me they would have been worth a million dollars easily.

XQ. 1260. I did not ask you what they were worth to you.

A. What they were worth to someone else I can not say, your Honor.

XQ. 1261. You do not know what the value would be to you?

A. I know what they would be worth to me—salvarsan and neosalvarsan.

XQ. 1262. You say they would be worth to you a million dollars?

A. Certainly, on my calculation.

XQ. 1263. I am coming to your calculation now. If you had bought the patents you could have worked under them, could you not?

A. I was working under them, yes, sir, certainly.

XQ. 1264. I did not ask you what you were doing.

A. Certainly I could have worked under them.

XQ. 1265. You could have worked under them because it was you who had the outstanding license to manufacture?

A. Yes, sir. In either case I could have worked under them.

MR. KRESEL: May I have that stricken out?

THE COURT: Yes.

THE WITNESS: Yes, sir, I could have worked under them.

XQ. 1266. Anybody that had purchased them under the conditions that I have set forth in my question could not have worked them, could he?

A. No one but the three licensees; no one else—or four licensees.

XQ. 1267. Assume, if you will, that they were bought by a person who had no license. Do you understand?

A. Yes, sir.

XQ. 1268. All right. Perhaps you misunderstood my question and I will ask it of you again. Assume that the purchase was made by a person who had no license, Federal Trade Commission or any other, and assume that there was an outstanding license giving some one else the exclusive right to manufacture in the United States, what in your opinion would have been the value of those patents on the 10th of April, 1919, to such a person?

A. That is a matter of legal—it would depend on the law and I would have to look it up first to see just what rights there were and what they would have brought in.

XQ. 1269. You would want to see the law first?

A. Certainly. I could not determine that off-hand, a matter of that kind, with so many of those questions.

XQ. 1270. What in your opinion was the value of these two patents on the 10th of April, 1919, assuming that there was an outstanding agreement between the Germans and an American citizen made before the United States went into the war, for the transfer of those patents to the American citizen?

A. Will you repeat that, Mr. Kresel?

MR. ANDERSON: That is subject to the same objection.

THE COURT: Oh, yes.

MR. KRESEL: The stenographer will read it.

(XQ. 1270 repeated as recorded above.)

A. That would depend on his rights also, as to the royalties collected and the legal questions involved; but I can not pass on that.

XQ. 1271. What do you mean "royalties collected"? What are you talking about now?

A. The royalties paid on the licenses existing up to that time. There was about $300,000 which he could claim probably.

XQ. 1272. Assume, for the purposes of this question, that the sale of the patents did not include the accrued royalties. Upon that assumption, what in your opinion was the value of these patents on the 10th day of April, 1919, in the face of an outstanding agreement between the German owners of the patents and a United States citizen, made before the United States went into the War, to transfer those patents to the American citizen?

MR. ANDERSON: It is possible, your Honor, that I do not catch the question of counsel; but in addition to the objection I have already made, I wish to add this objection: that the question is predicated upon and assumes a state of evidence which is contrary to evidence here, or, at least, an incomplete statement of evidence in another particular which I have not pointed out. The evidence is perfectly clear, your Honor, that there were licenses outstanding under the Federal Trade Commission, which were earning royalties under all these patents.

THE COURT: Neosalvarsan?

MR. ANDERSON: Salvarsan and neosalvarsan and novocain; and the amount of royalties being paid annually has been testified to by these long statements, and that that was a continuing license for the life of the patent.

Your Honor will observe, therefore, a revenue continuing, and if there were no remaining value in the patent at all, the right of a purchaser to receive those continuing royalties under that patent for the life of the patent is certainly a valuable right, because that is like the lease of a house.

THE COURT: I think I understand you.

MR. ANDERSON: In the second place, if it is an assumption that there was a grant or an effort to grant to this witness, or anyone else, by the

German interests before the seizure, of a license to use these patents exclusively, and that license or contract, which was identified but not put in evidence here, as I recall (it may have been put in), gave to the seller or the licensor, whichever it might be, a right to receive a continuing interest in the business, profits or royalties, or in any other form, then it necessarily follows that if the patent was conveyed subject to that exclusive right, assuming such was the truth, then the purchaser of that patent from the Alien Property Custodian would necessarily have received the right to whatever benefits accrued under that contract during the period of the contract. If the contract continued, the benefits would continue. If it ended, then it was no longer a burden.

Therefore I submit to your Honor that a hypothetical question asking for an opinion of the witness as an expert must set forth the facts accurately, to the end that he may predicate upon accurate facts, and not upon a partial statement of them.

THE COURT: See if I understand you, Colonel Anderson: Depending upon the different theories in the case, two hypothetical questions might be asked, I take it: (1) What would be the value of this patent on April 10, 1919, subject to an outstanding license under the terms and conditions set forth in the agreement between this witness or his company and the German owner? That would call for one answer on one basis. You could say probably, very properly, that would depend upon the terms of that agreement.

(2) What would be the value of that property on the same day, subject to four licenses which had theretofore been issued by the Trade Commission?

MR. KRESEL: And if counsel had waited, that would have been my next question.

THE COURT: Now then, of course you do not contend, I assume you do not contend—and I am asking this merely to see whether I am right in my assumption—that the Trade Commission license royalties are in and of themselves any indication of the value of the patent? These royalties paid to the Trade Commission are arbitrary royalties, are they not?

MR. ANDERSON: Five per cent.

THE COURT: As I recall the statute, they are subject to no royalties or such royalties as the Court may subsequently allow; and that is a purely arbitrary statutory royalty.

MR. ANDERSON: That involves a great many questions in this case. I take it that the presumption would be clearly in favor of the continuance of the royalty under the license issued by the Federal Trade Commission in the absence of anything else, because the presumption is always in favor of the validity of an act of an official of the Government.

May I answer your Honor's question a little more fully, because this is an important question?

THE COURT: Yes, certainly.

MR. ANDERSON: I recognize I am on an intricate and technical question of law and I do not claim to be an expert in patent law. I am old enough now to say I don't know.

In the first place, I assume that a number of hypothetical questions might be asked this witness: First, assuming that there were no licenses on this patent and it was perfectly free to be transferred without any restrictions or burdens, what would be its value?

THE COURT: That was your question.

MR. ANDERSON: No, sir. My question was, what its value was subject to the Federal Trade Commission license in every instance; because the evidence was that it was subject to that license for the life of the patent. In every instance, that was my question. I went over it last night and found out that that was true. That would be a question, where there were no limitations and where the people were free to deal with the patent as they saw fit.

Then there might be a question predicated upon the contracts which have been identified here and read from but not put in evidence. I doubt if they can be made the basis of a question unless they are put in evidence. I don't think they can.

THE COURT: I wonder if you would not be left in this difficulty. Suppose in the eventual determination of the case the facts should be found different from those assumed by you in your question; then would you have any evidence of value on the real facts?

MR. ANDERSON: Possibly, unless there was other evidence on which the value could be predicated with reasonable accuracy, I might be left without adequate evidence of value. There would be some. I will state what I stated to your Honor the other day, that in my view of the law in this case, which I can not be assured your Honor is going to accept, there is no burden on the Government to show any value in this case. I am doing it because we averred certain facts and are going to prove them if we can. When we once call for an accounting of the trustee and prove that the property came into his hands, the burden shifts to him and that is where he has to discharge his responsibility.

But aside from that law point which we will argue when we come to it, I was saying that there might be a question first on an actual free transaction.

Second, assuming that the evidence not put in the record here can be made the basis of a hypothetical question, and counsel assumes in his hypothetical question the fact that there was, whatever it was, a possible outstanding interest in the witness or anyone else derived from the German owners before the seizure, validly derived, then of course the value would depend upon the construction of that contract, the rights under that contract, the limitations upon the rights of the owner or grantor and the right of the owner or grantor to receive benefits thereunder, all of which would be a question of very delicate construction. That would be the second phase.

Assuming that right to be outstanding, we might go one step further and assume the existence of valid licenses of the Federal Trade Commission, of four licenses. Then you would be predicating on five propositions. Your Honor now sees my position?

THE COURT: Yes, but I am wondering if there is not a flaw in that theory. I do not know. But if there was an outstanding exclusive license in Mr. Metz or his companies, and then getting to a matter of law, assuming that the United States took only the rights of the Germans and did not take his rights, then you would be confronted with the proposition, would you not, that the Federal Trade Commission licenses were invalid?

MR. ANDERSON: Undoubtedly.

THE COURT: In view of these various questions of law, which we are not deciding as we go along,

I am going to permit Mr. Kresel, subject to your objection, to predicate as many questions on as many different theories as he desires.

MR. ANDERSON: Of course. I am not going to argue the matter further. There were other phases of it.

THE COURT: I did not intend to preclude you.

MR. ANDERSON: I was coming to the very phase your Honor indicated, that if there was a valid exclusive license outstanding which the Government would have to recognize then the question would come up—what if any rights the purchaser had under the Federal Trade Commission license and what right if any he had to any accrued royalties if any.

Then we come to the third proposition, whether he was estopped to raise the question of the validity of the Federal Trade Commission licenses as long as he had taken them out himself. We are getting into an extremely delicate situation and I think that this question is entirely incomplete as a basis for value.

THE COURT: No more so than yours, Mr. Anderson, is it?

MR. ANDERSON: Possibly not complete as to my own, but I had to take the evidence that was then in. All the other evidence was not in, I frankly did not know it or I would have put it in.

THE COURT: I think the only practical way of disposing of this matter is to allow Mr. Kresel to predicate his questions on the various theories he has in mind.

MR. ANDERSON: I simply wanted to point out the various difficulties, to the end that they might be overcome, if possible.

THE COURT: I thank you very much, Colonel Anderson.

XQ. 1272. (continuing) Mr. Metz, have you the question in mind or would you like to have it read to you?

A. The last question, please.

(XQ. 1272 repeated as follows) "Assume, for the purposes of this question, that the sale of the patents did not include the accrued royalties. Upon that assumption, what in your opinion was the value of these patents on the 10th day of April, 1919, in the face of an outstanding agreement between the German owners of the patents and a United States citizen, made before the United States went into the war, to transfer those patents to the American Citizen?"

A. I can not answer that question.

XQ. 1273. You can not answer it?

A. I don't believe anybody could.

XQ. 1274. You mumbled there. I can't get it.

A. I don't believe anybody could answer that question.

XQ. 1275. That is an answer. You can not give it and you do not believe anybody could. Now, I want you to assume, Mr. Metz, that on the 10th day of April, 1919, these patents were offered for sale—we are talking only, you understand, about the salvarsan and neosalvarsan patents—that they were absolutely free except for the three or four Trade Commission licenses that were then outstanding and that the sale would include and carry with it all accrued royalties up to that day. What in your opinion under those circumstances were those patents worth?

A. At least a million dollars, I have testified.

XQ. 1276. Assume that on the 10th day of April, 1919, these patents were absolutely free except for the Federal Trade Commission licenses then outstand-

ing, but that the sale did not carry with it the accrued royalties; what in your opinion were they worth on that day?

A. That would be based on the earning capacity then.

XQ. 1277. Not based. What were they worth?

A. Based on my knowledge of them, a million dollars still.

XQ. 1278. Still a million dollars?

A. Yes, sir; on the earning capacity.

XQ. 1279. Assume that on the 10th day of April, 1919, these patents, in addition to having the Federal Trade Commission licenses outstanding, were also burdened with a license granted by the Germans to an American citizen prior to our entry into the war, giving that citizen the exclusive right to manufacture thereunder in the United States; what, in your opinion, were the patents then worth under those circumstances?

MR. ANDERSON: Subject to the same objection, your Honor.

THE COURT: Oh, yes.

A. They would be worth more to me than to anybody else.

XQ. 1280. I did not ask you that.

MR. ANDERSON: I do not want to press the objection, but I want to make my position very clear here. I do not think that the question in the form asked is legal without at least having the alleged license introduced in evidence or stating what were the terms of the license, because, how can anybody estimate the value of a patent, subject to an exclusive license, without knowing the terms of the license?

The question is not fair. It is a question that can be misunderstood. It does not state the facts

and may lead the witness into an entire misunderstanding. I am frank to say I can not follow it very easily myself.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: No, your Honor.

THE COURT: Why is there not merit in Colonel Anderson's objection that the record does not disclose, even though the witness may know of his own knowledge, what were the terms of the agreement between the German owners and his company?

MR. KRESEL: Why, your Honor, the witness testified that he was to pay nothing to the Germans for that license.

XQ. 1281. Didn't you?

A. Yes.

THE COURT: Your assumption is based on an error of fact, is it not, Colonel Anderson?

MR. ANDERSON: No, the terms of the license do not appear. He may have said that he did not have to pay anything, but there may have been terms in the license which were very beneficial to the owners. It may have been an indeterminate license.

THE COURT: Aren't you shifting?

MR. ANDERSON: No, sir. I am not conscious of shifting.

THE COURT: I am only asking the question. If the Germans got nothing for the license, then a person buying the Germans' interest would have gotten nothing.

MR. ANDERSON: Let me suppose this case, in order to make my position clear. I do not know what the terms of these contracts are. I have not seen them. I want to have a chance to see

them before I take up the re-direct examination of this witness, if I can.

Suppose in 1916 the German owner of this patent had realized that he could not ship into the United States and could not manufacture in the United States; and, therefore, if this market was not kept open for his product and its good will preserved and the business preserved, it would be an enormous loss to him. I am assuming now these facts. Everybody knew that the war was going to end. Everybody expected it to end about every six months.

Therefore, to have preserved this business right over here may have been of enormous value and so far as anything in this record shows, the licensee may have reasserted his right in America immediately. He may have been only too glad to have somebody take his patent and use it and manufacture under it and sell under it and develop that business during the period that he could not develop it—just as a man would be only too glad to have somebody else take his house and keep it in good condition while he was abroad, without any rent; it might be worth $10,000 a year.

Therefore, there are all kinds of elements that enter into value, depending upon the surrounding facts and circumstance; and to predicate a question of this kind upon the mere fact that a money payment was not to be made, assuming that to be the case (and that does not appear of record, except the witness has testified that he was not paid any money I believe. I do not recall; but I assume it is in the case)—that being the case, that does not give us the facts upon which you can predicate such a question. I can not possibly know those facts if they are not in evi-

dence, and how can the witness know them? He might know them if they were in evidence; but he can only speak upon the record. I have merely suggested that as one of the suggestions that is apparent upon the face of the question. It is clearly an objectionable question.

THE COURT: Have you anything to say in reply?

MR. KRESEL: No, sir, I do not think I have anything to add.

THE COURT: What is the question, Mr. Stenographer?

(XQ. 1279 repeated as above recorded.)

THE COURT: By "exclusive license," of course, I shall assume that you mean a license that would run throughout the life of the patent without the payment of license fees or royalties.

MR. KRESEL: Yes, your Honor.

XQ. 1281. (continued) —and please assume that in my question, you understand?

A. That is the condition.

XQ. 1282. That was the condition?

A. That is the condition I maintained as to myself.

XQ. 1283. Of course, that is the condition of the license that you say you had, isn't that right?

A. Yes, sir.

XQ. 1284. All right, now, I want you to answer the question.

A. To me it would be worth a million dollars easily.

XQ. 1285. What would it have been worth to a person who did not hold that exclusive license, as you say you did hold it?

A. I can not judge that, Mr. Kresel.

XQ. 1286. Can give no estimate or opinion thereof?

A. It would be subject to law suits and everything else.

XQ. 1287. I did not ask you about that. Can you give any estimate of the value of the patents to anybody else other than yourself under the circumstances assumed in my question?

A. I have not considered that and I can't.

XQ. 1288. You can not?

A. I can not.

XQ. 1289. Now please assume that on the 10th day of April, 1919, these patents were absolutely free, except that there were outstanding the Federal Trade Commission licenses that you have mentioned and also there was outstanding an agreement made between the Germans and an American citizen before the United States entered into the war, to convey those patents to the American citizen. What, in your opinion, would the patents have been worth then?

A. I can only repeat the answer: To me, so much, and to others, I can not judge.

XQ. 1290. What to you?

A. At least a million dollars.

XQ. 1291. And how much to anybody else?

A. That is up to them to judge; I can't.

XQ. 1292. You can't give any answer to that?

A. I can not put myself in their position. I do not know, not without—

XQ. 1293. There you go again; I can't catch what you say.

A. Without looking up the details, I was going to say.

XQ. 1294. Looking only at the details that I have put in my question. Now please try to be a witness and not a lawyer. I mean that honestly, Mr. Metz.

A. I say I don't know that, Mr. Kresel.

XQ. 1295. You say you do not know?

A. I say I do not know.

XQ. 1296. You can not give an answer to that question?

A. Not offhand, no, sir.

XQ. 1297. You know enough about patents and manufacturing to understand the term "know-how" that is applied to patents, do you not?

A. Yes, sir; knowing how.

XQ. 1298. That means, does it not, the information and the technical knowledge to enable a person to manufacture an article that is covered by the patent?

A. The patent is supposed to convey that information to the man that knows how.

XQ. 1299. You know, of course, that patents do not?

A. Some do; some do not.

XQ. 1300. Some do and some do not; very well, we will come to that. As an example of the value of the "know-how" in connection with a patent, you have in mind, have you not, your own experience?

A. Yes, sir.

XQ. 1300. (continuing) As a manufacturer of salvarsan?

A. Yes, sir.

XQ. 1301. You had this patent available to you before the war and during the war; you were the representative of the owners of the patent before the war; you sent your brother abroad, who spent four months studying in the German factory how to make salvarsan; and yet, according to your testimony yesterday, it took you more than a year after he came back before you could produce it?

A. Because we had no machinery.

XQ. 1301. (continued) That is true, is it not?

A. Because we had no machinery, yes, sir; preparing a plant, not making salvarsan.

XQ. 1302. Now, Mr. Metz, you do not mean to say that that delay was only because it took you so long to install the machinery?

A. Largely.

XQ. 1302. (continued) In the face of the agreement that you made with Dr. Schamberg in June, 1918; do you?

A. You mean the Stieglitz agreement?

XQ. 1303. I call it the agreement with Dr. Schamberg of June, 1918?

A. I mean to say we were still hampered by machinery, yes, sir.

XQ. 1304. And that was your only hampering?

A. That was the main hampering, yes, sir.

XQ. 1305. And that you had no difficulty in producing the stock except because you did not have the machinery?

A. I say, we did produce the stock.

XQ. 1306. And that you had no difficulty in producing it except for the machinery?

A. No difficulty when we once got started, no, sir.

XQ. 1307. I am perfectly willing to leave it there. Now, as an example of the value of the "know-how" do you remember testifying that the Badische Company, for instance, had a patent on synthetic indigo and yet it took them twenty-five years and that they had to spend millions of dollars before they succeeded in producing indigo; do you remember testifying to that?

A. No, that is not true, Mr. Kresel.

XQ. 1308. It is not the truth?

A. They produced indigo, but not on a commercial scale, which is a great deal different.

XQ. 1309. Oh, that is what you mean?

A. That is what I mean, certainly, to produce it commercially.

XQ. 1310. What is the value of a patent if you can not produce it commercially?

A. That is an open question.

XQ. 1311. That is true, is it not?

A. That is an open question. From a scientific standpoint, it may be very valuable.

XQ. 1312. And you remember you testified, speaking upon this subject, that chemists know the why, but it is the practical man that knows the how?

A. Yes, sir.

XQ. 1313. And you remember testifying as follows, do you not, speaking of the licenses granted under these very patents. I am reading from page 719 of the Hearing before the Committee on Ways and Means:

> "Licenses have been obtained for some time past from the Federal Trade Commission by a number of concerns under the patents for vat colors, and yet none of them has so far been manufactured in this country. This would seem to indicate that more than the mere patents have stood in the way of manufacturing, since otherwise these vat dyes would have appeared in the market by now."

A. Yes, sir.

XQ. 1313. (continued) That was true?

A. That was true.

XQ. 1314. Of course, you know that when The Chemical Foundation bought these patents, they did not get the "know-how" from the Germans, did they?

A. Whatever was in the patent they got and nothing else.

XQ. 1315. And you know, do you not, that you could not produce under these patents?

A. I know we did in the laboratory, but had no raw material for the commercial operation.

XQ. 1316. I am not speaking particularly of salvarsan?

A. I am speaking of colors.

XQ. 1316. (continued) Just a moment; I am not through.

A. I am speaking of colors.

XQ. 1316. (continued) Just a moment. I am not through. I am speaking generally with reference to the patents which are here in question. Do you not know that you could not work with those patents any way?

A. I do not know. I know that we did work in the laboratory under our license for vat colors, but had not the raw material to make it commercially and could not obtain it in this country.

XQ. 1317. Did you not testify before the House Committee on Ways and Means that you could not work under these patents any way?

A. You can on some and some you can't; in a general way, certainly.

By THE COURT:

Q. 1318. The question is whether you so testified or not?

A. I assume I did, yes. I think I made that statement several times.

By MR. KRESEL:

XQ. 1319. And it was true, was it not?

A. In a general way, yes; but under specific patents it isn't.

By THE COURT:

Q. 1320. Which is true? What you just said or what you testified before the Committee?

A. That is what I testified. In a general way it

is true, I will say that again; but if you will give me a certain—

By Mr. Kresel:

XQ. 1321. Let me read you what you testified.

The Witness: (continuing): But if you will give me a certain patent; it will be different with individual patents.

XQ. 1321. (continued) I read from page 24 of this record before the Committee on Ways and Means:

"Now, Mr. Chairman,"

you said,

"there is another great danger, as I view it; the question has been raised of The Chemical Foundation taking over these patents. Well, there is safety in that. In other words, the patents have no value as such except for the purpose of keeping out infringing products."

You testified to that, did you not?

A. I did, yes, sir.

XQ. 1322. "They were simply clubs used to keep out other manufacturers."

You testified to that, did you not?

A. Many of them were, certainly.

XQ. 1323. Didn't you so testify?

A. Yes, yes, yes, it is there.

XQ. 1324. "You can not work with those patents any way."

Did you not so testify?

A. Yes.

XQ. 1325. "And there are a great many of these patents that under the patents we can allow goods that we will not make here to come in, and it is going to do it."

Did you so testify?

A. Yes.

XQ. 1326. And was that testimony true?

A. Yes, to a large extent.

XQ. 1327. And is it true today?

A. To a large extent, yes.

XQ. 1328. Well, wasn't it true as you testified? Never mind your "to a large extent."

A. Well, you have got to give me specific—

XQ. 1329. Wasn't it the truth?

A. Yes.

XQ. 1330. And isn't it true today?

A. Yes, practically true.

XQ. 1331. And did you not testify also that these patents have only a nuisance value?

A. Well, it is not only; they had a nuisance value.

XQ. 1332. Did you not say that they had only a nuisance value?

A. It is not fair to pin me down to statements made before the Committee in a general way.

XQ. 1332. (continued) Please don't argue with me.

A. I will say yes, then.

By THE COURT:

Q. 1334. Did you or did you not so testify?

A. I did at the hearing, undoubtedly.

By MR. KRESEL:

XQ. 1335. Talking about the "know-how," Mr. Metz, you remember you tried to manufacture beta-naphthol, did you not?

A. That was not patented. We did manufacture. We are manufacturing.

XQ. 1336. I did not say it was patented.

A. We are manufacturing. We are manufacturing.

XQ. 1337. You remember that when you started in to make beta-naphthol you had a man who claimed to know how to make it, do you not?

A. Yes, sir.

XQ. 1338. You know, do you not, that after working for a long time, all that you could get was a laboratory quantity, and finally gave it up?

A. Oh, I don't think that is true. We built a large plant, and one of the largest consumers—

XQ. 1339. When you started to make it, the best you could do for months was to produce laboratory quantities?

A. We had no plants; naturally. When we had a plant we made it.

XQ. 1340. Let me understand what you mean by "plant." Do you mean brick and mortar and iron and steel; or do you mean—

A. I mean—

XQ. 1340. (continued) Wait a minute. Or do you mean your machinery and the skill of people who knew how to make it?

A. By "plant" I mean brick and mortar and the machinery necessary to make it; proper machinery.

XQ. 1341. That is all you mean?

A. That is what I mean by "plant," yes, sir.

XQ. 1342. So that you say now that you were able to make beta-naphthol. You had no difficulty at all except that your building and machinery did not come in quick enough?

A. That was the main drawback, we had—

XQ. 1343. Was it the entire drawback?

A. You have got to experiment around before you get a thing finished, naturally, Mr. Kresel, with the crude materials which you get?

XQ. 1344. Then it was not only the fact that your building did not go up fast enough?

A. It was a combination of circumstances during the war, and you could not get raw material.

XQ. 1345. It is a fact, is it not, that the patents that are here involved, namely, the patents that were

conveyed by the Alien Property Custodian to The Chemical Foundation cover only 10 per cent of the dyes that were produced?

A. As to the number of dyes, yes, sir; approximately 10 per cent, I should say.

XQ. 1346. Now, what do you mean "as to the number of dyes?" You see, you qualify your answers so that I don't know where I am at with you.

A. Well, 10 per cent, whether you figure it on money value or on quantity is quite different.

XQ. 1347. Oh, no; I am not speaking of money value; I am speaking of dyes as dyes.

A. On bulk produced or as the names of dyes, the individual dyes? That is a great difference, Mr. Kresel.

XQ. 1348. Is it not a fact that they cover only 10 per cent of the bulk of dyes?

A. I can not say that, Mr. Kresel.

XQ. 1349. Is it not a fact that 90 per cent of the dyes that are produced in this country are free of patents?

A. Yes, sir, if you put it that way, yes, sir; at least 90 per cent.

XQ. 1350. Lest there be any question as to what you mean by that answer, I will read to you from your statement made to the House Committee on Ways and Means. I read from page 728 of this record. You said:

> "Over 90 per cent of the tonnage and of the individual dyes used in the United States will be free from any patent restraint within the next four years. Over 75 per cent of the dyes are now in that condition."

Was that true?

A. That is true, to the best of my knowledge and belief, Mr. Kresel; and was true then.

XQ. 1351. How high a royalty did you pay the Federal Trade Commission on novocain?

A. I will give you the figures.

XQ. 1352. I did not ask the figures; I mean the rate of royalty?

A. 5 per cent.

XQ. 1353. 5 per cent?

A. On the gross sales.

XQ. 1354. 5 per cent on the gross sales. Now, did you testify that your gross sales of novocain for 1919 were $246,295.67?

A. Let me see if that is correct. I have the figures. (Refers to papers.) How much?

XQ. 1354. (continued) $246,295.67?

A. What year did you say, Mr. Kresel, please?

XQ. 1354. (continued) 1919?

A. $246,295.67, yes, sir.

XQ. 1355. Well, that is the figure I gave you.

A. That is right, sir.

XQ. 1356. Now, I wish you would calculate 5 per cent on that and tell me the result?

A. The royalties I have here are forty-six hundred—

XQ. 1357. I did not ask you anything about that. Now please answer my question. I want you to tell me, if you can (if you can not, you can say so), what 5 per cent is on the gross sales that you have just given me for 1919?

A. (Witness makes calculation.)

MR. ANDERSON: On what page does he give his gross sales, Mr. Kresel?

MR. KRESEL: Page 1718.

XQ. 1357. (continued) Can you give us the result?

A. I am trying to get at it, Mr. Kresel; in just a moment.

XQ. 1358. I am afraid you do not figure rapidly enough to suit me.

A. No, I have got figures here. I do not know exactly how they—

XQ. 1359. I want to know if you can give us the result of that. If not, I will pass on.

A. Well, I have got the figures we paid here—

XQ. 1360. I did not ask you what you paid. I want to know if you can give me the result of 5 per cent on $246,295.67?

A. Yes, I will give it to you in just a second.

XQ. 1361. What is it?

A. Just let me have one moment.

XQ. 1362. In round figures it is about $12,000, is it not?

A. $12,000? Yes.

XQ. 1363. All right. Now, you testified that you paid as royalties on novocain to the Federal Trade Commission in 1919 $4863.74, did you not?

A. $4683.

XQ. 1364. $4863.74 is what the record shows.

A. Well, that is a mistake. It is forty-six hundred in my record here.

XQ. 1365. $4600. I will take your correction; $4683.74. Now will you explain to the Court how it is that you did not pay to the Federal Trade Commission the entire amount of royalties due, if you are right in saying that those were your sales?

A. Yes, sir. The sales include the tablets and the solutions. We only pay upon the novocain in the tablets and the solutions, which was arranged with the Commission and checked up by Mr. Buffum and Mrs. Wilson at my office. The bottles and the other products going in do not pay a royalty; only the novocain in those solutions; and we had the whole thing in our books as novocain sales, and got a separate memorandum of the stuff in there, which was checked up. I told you I have not the quantities of novocain at that time.

XQ. 1366. Are you through?

A. Yes, sir. That explains the difference.

XQ. 1367. Are you through?

A. Yes, sir.

XQ. 1368. You say now that you did not pay royalty on all your novocain sales?

A. On all the novocain sales as novocain, yes; absolutely every ounce of it, every gram of it.

XQ. 1369. You say, Mr. Metz, that you did not have to pay a royalty to the Federal Trade Commission for all your novocain sales?

A. I did not say that, Mr. Kresel.

XQ. 1370. Were all your novocain sales $246,295 in 1919?

A. They were novocain preparations and—

XQ. 1370. (continued) No, no, no, no; answer my question.

A. Not on that basis that they contained other things than the tablets; but the sales book shows the total. This is taken from our sales book.

XQ. 1371. Did you not testify on your direct that your sales of novocain in 1919 were $246,295.67?

A. Yes, but I want to modify that by saying—

XQ. 1371. (continued) Now, —

A. Yes, I did.

XQ. 1372. Do you want to change that?

A. I want to modify that to say—

XQ. 1373. All right, modify it any way you want.

A. The sales of novocain other than the novocain preparations, which are all in the same book and checked up by the representative of the Custodian and Federal Trade Commission.

XQ. 1374. How much were the sales of your novocain preparations so-called?

A. I had that straight here on novocain and I gave them to you. I will have to look that up. I can not give you the amounts. I will give you the figures.

XQ. 1374. (continuing) What do you mean you can not give me the amounts; you will give me the figures?

A. I have not got the tablets and the solutions separate. I have simply got novocain as such; but I have got the amounts in pounds and ounces, which are separate. I will have to check those back, Mr. Kresel. That escaped me; I am very sorry.

XQ. 1375. Now, Mr. Metz, I am waiting for your attention if you will give it to me.

A. I beg your pardon, Mr. Kresel; I was looking for a paper; pardon me.

XQ. 1376. The reason that you say you paid only $4683.74 in royalties to the Federal Trade Commission in 1919 was that you did not have to pay a royalty on novocain preparations; is that your answer?

A. On the products that went into them besides novocain, yes, sir. We paid for the novocain in the preparation.

XQ. 1377. I will repeat the question. Is it your claim that you did not have to pay a royalty on what you have called novocain preparations?

A. That is not my answer. My answer is—

XQ. 1378. All right, now. If that is not your answer, let me put another question: You said that your sales were $246,295.67. Is it true that those were sales of novocain?

A. Novocain and—

XQ. 1379. Yes or no?

A. Not entirely.

XQ. 1380. What is included there in that figure in addition to the novocain?

A. Novocain tablets and solutions.

XQ. 1381. Are not novocain tablets novocain?

A. There are the small bottles—

XQ. 1381. (continued) Aren't they novocain?

A. Novocain and a mixture, in some cases, of something else.

XQ. 1382. Novocain tablets that you sold and that you included in that figure, were they not novocain?

A. They contained novocain.

XQ. 1383. Were they not novocain?

A. Some were not novocain, no, sir; they contained novocain.

XQ. 1384. Under what name did you sell them?

A. "Novocain tablets E," "T," and so forth, which are different combinations.

XQ. 1385. Is it your claim that under your Federal Trade license you did not have to pay a royalty on such novocain tablets, E, T, and so on?

A. Only on the novocain in those tablets; that is my claim was my arrangement with the Commission.

XQ. 1386. You speak of an arrangement with the Commission. Was that in writing?

A. I went down and saw them.

XQ. 1387. Was it in writing?

A. I do not recall. I know they checked it up and were satisfied with those conditions.

XQ. 1388. You know, do you not, that you did not pay to the Federal Trade Commission either during 1919 or 1920, or 1921 or 1922, an amount equal to five per cent on the sales that you gave us?

A. Not on the sales, because the sales, as I say now are—

XQ. 1389. Well, not on the sales, that is the answer.

MR. KRESEL: May I have the rest beginning with "because" stricken out?

THE COURT: Motion granted.

A. Not on the sales I gave you as covering novocain.

XQ. 1390. You did not give me any sales, I beg your pardon; you gave them upon your direct examination.

A. Yes, sir.

XQ. 1391. That is all I want to know.

A. I would like to correct that, your Honor.

THE COURT: The witness says he wants to qualify something.

XQ. 1392. Certainly, now you may qualify it.

A. Those sales contain the total of the sales of the novocain, but in which are included the bottles and the ingredients that enter into the tablets, that are not novocain, and therefore require no license, and so arranged with the Federal Trade Commission. They contain, however, all the sales of novocain in every form, plus these outside propositions, which should have been deducted, and I regret that that has not been done or had not been done when the list was handed to me. But that can be done at any time and I will be glad to do it.

XQ. 1393. I asked you on last Saturday to produce your books showing the amount of your sales in 1919, 1920, 1921 and 1922. Have you them here?

A. I sent my bookkeeper back for some of them and I think he brought them here to the hotel.

XQ. 1394. Will you produce them?

A. I can bring them here.

XQ. 1395. They are not here?

A. They are in the hotel.

THE COURT: Are you going to take up the books now?

MR. KRESEL: I would like to see them, sir.

(At this point a short recess was taken at the direction of the Court.)

XQ. 1396. Before the recess, Mr. Metz, I asked you to produce your books showing the amount of your

sales during the years 1919 to 1922, inclusive. Have you those?

A. My man informs me there are 25 sales books. He did not bring all the sales books. He brought the sheets which were checked from the books.

XQ. 1397. I did not ask for sheets and I do not want anything about them. I would like to see the books.

A. I haven't got those books. They were not asked for. The sales book for 1914, the first sale of salvarsan to the Government was asked for and that I have got. I sent my man for that and these sheets he brought from the books.

XQ. 1398. If you misunderstood me on Saturday, very well. I state to you now that I want to see your books which show that you made the amount of sales that you testified to here on the direct. How long will it take you to get them?

A. Is it necessary to bring 25 sales books down here from New York to check up?

XQ. 1399. How long will it take you to get them?

A. We can send to New York to bring them down. I have the records from the books checked up, if you want those.

XQ. 1400. Can you get them here this afternoon?

A. No, not possible.

XQ. 1401. Can you get them in the morning?

A. I can send my man. I can't get them. I have the sheets here. I can't do business without my books.

XQ. 1402. Can you have them tomorrow?

A. If the Court so orders me.

THE COURT: Mr. Kresel, I am going to let you proceed in your own way, but I am wondering whether you care to inspect these sheets and then determine whether you want the books or not.

MR. KRESEL: I will do that, your Hono..

MR. ANDERSON: Would your Honor permit me to make this suggestion to counsel. The witness, I understand, has his ledgers. He has the sheets showing the royalties paid in detail, which have been checked by the representative of the Federal Trade Commission, and Mr. Buffum, who is now representing The Chemical Foundation. Would it not be a little unreasonable—I do not mean that counsel means to be unreasonable—to require the whole 25 sales books?

THE COURT: No, Colonel Anderson, but haven't we made progress? Mr. Kresel said he would examine the sheets.

MR. ANDERSON: I did not hear that.

MR. KRESEL: I am going to look at the sheets and then examine Mr. Metz.

MR. ANDERSON: I can not hear back here.

MR. KRESEL: I am going to speak louder. May I proceed, sir?

THE COURT: Yes.

XQ. 1403. You testified upon your direct examination as to the amount of profits that you made. You started in by giving your alleged profits beginning with 1913.

A. Yes, sir.

XQ. 1404. Have you in Court here the books which will show what those profits were?

A. I have the ledgers from which the Treasury reports are made.

XQ. 1405: You have the ledgers?

A. I am not a bookkeeper. My bookkeeper will account for all that, Mr. Kresel.

XQ. 1406. Please, Mr. Metz; you say you have your ledgers?

A. The ledgers are here; yes, sir.

XQ. 1407. Will you take your ledgers and point

out to me therein the entry of the profits that you made during the years for which you undertook to give figures?

A. Personally I would not recognize them in my books. My bookkeeper can do that. I am not a bookkeeper, Mr. Kresel.

XQ. 1408. Your answer is you can not do it?

A. Personally I can not. I do not think I can.

XQ. 1409. All right, that is an answer. I asked you yesterday whether you had ever met Gaston Means. Do you remember that?

A. Yes, sir.

XQ. 1410. You testified that you never saw him. Does that mean that you never spoke to him?

A. It means to the best of my knowledge I never saw the man or spoke to him. To the best of my knowledge and belief. I do not recollect ever seeing or speaking to him, ever.

XQ. 1411. And that you never wrote to him?

A. That I do not know officially, if we had a communication. I do not recall it, if I did. I do not know the man, that is all I could say. I would not know him if he was in the courtroom.

XQ. 1412. And that you never received any communication from him?

A. I do not recall any such communication, Mr. Metz, to the best of my recollection.

XQ. 1413. You testified that you had been informed that this man Means had been making an investigation of this case?

A. Newspaper reports so stated.

XQ. 1414. Did you not confer with Means about this case?

A. I never did to my recollection; no, sir, never.

XQ. 1415. Do you mean to say that you have for-

gotten whether you did confer with him about this case?

A. I mean to say if it was Means I did not know it, and to my recollection I do not know. And I could positively swear to that, Mr. Kresel, and I am under oath.

XQ. 1416. You did confer with Bennett?

A. Bennett came to see me time and again in my office. You do not call that a conference, do you?

XQ. 1417. You did talk with Bennett?

A. Bennett came to me time and again, yes, sir.

XQ. 1418. And you talked with him?

A. He talked with me and mentioned facts, but it did not interest me one bit.

XQ. 1419. And you talked with him about this case?

A. Undoubtedly, Mr. Kresel, in the course of the conversation.

MR. ANDERSON: I think you will have to say what time.

MR. KRESEL: I am coming to that.

MR. ANDERSON: But you are asking the witness, and that ought to come first.

MR. KRESEL: Please do not criticize me. If you have an objection, please raise it. I do not like counsel telling me that I should put one question ahead of another.

MR. ANDERSON: I am sorry, your Honor, if I offended counsel.

THE COURT: Colonel Anderson, there is no question before the Court now. Let it pass, and let us have the next question.

XQ. 1420. Mr. Metz, you had talks with Bennett before this suit was brought, did you not?

A. Oh, yes; he has talked to me very often.

XQ. 1421. And you met Bennett in Washington, did you not?

A. I saw him there undoubtedly when I was there and he came there.

XQ. 1422. And you saw him in your office in New York, did you not?

A. Yes, at various times.

XQ. 1423. And you gave him information with regard to The Chemical Foundation and these patents, did you not?

A. Not specifically; in conversation possibly; answered questions if he asked them.

XQ. 1424. And you talked with him about your trip abroad?

A. Undoubtedly, in general conversation, certainly.

XQ. 1425. And you told him that you had talked with your former principals about the return of these patents, did you not?

MR. ANDERSON: I shall have to object.

THE COURT: The time, place and persons will have to be specified, Mr. Kresel.

XQ. 1426. I am speaking, Mr. Metz, only of the conversations that you had prior to the bringing of this suit, which was September, 1922. Do you understand me?

THE COURT: That does not comply with the general rule, as I understand it, and does not comply with the local rule which requires, for purposes of contradiction, that you designate and specify in your question the time and place and persons present.

MR. KRESEL: All right, your Honor.

MR. ANDERSON: In addition to my general objection, I wish to renew very earnestly my objection to this examination as being entirely immaterial and irrelevant.

THE COURT: As I understand the purpose of

the examination, all of it has been either on one or two grounds, or on both, namely, the interest, the bias, the credibility of this witness, or his testimony with respect to values; and I understand this question is leading up to a matter which goes to a question of credibility.

XQ. 1427. Did you not on or about the 6th day of September, 1921, have a conference with Mr. C. Cyril Bennett and with Mr. Pickerell, as to whom you testified yesterday that he was in your employ, with reference to The Chemical Foundation and the patents here involved and the proposed suit to be brought thereon by the Government?

A. I have no recollection of such a conversation or any idea of a suit being brought.

XQ. 1428. I will ask you the same question and shall omit the statement that a suit was to be brought.

THE COURT: The question does not embody the place. The way those questions are framed here is whether the witness did not at a certain time and at a certain place, with certain persons present, make a statement, specifying the statement, or use words to that effect. We are probably very strict about those rules here; and unless that is put in more or less that form, we do not permit contradiction.

MR. KRESEL: All right, your Honor; I will observe the rule.

XQ. 1429. Did you not on or about the 6th day of September, 1921, in Washington, D. C., have a conference with Mr. C. Cyril Bennett, at which Mr. Pickerell was present, and at which time you asked Mr. Bennett to obtain for you from the files of the Alien Property Custodian information regarding the patents conveyed to The Chemical Foundation?

A. I have no such recollection. Those lists were

available. I had them in New York—the patents transferred or obtained. They were all published. I had them. There was no use asking Bennett to get them and I don't recall that I did.

THE COURT: Will you repeat the question, Mr. Kresel? I do not think the witness understood.

MR. KRESEL: I will repeat it. Indeed, I should prefer to have the stenographer repeat it, if your Honor will permit it.

(XQ. 1429 repeated as above recorded.)

A. I do not recall such a meeting.

XQ. 1430. And at that meeting, is it not a fact that Mr. Bennett stated to you that the only way he could get that information was through Senator Moses and that he would request Senator Moses to get you that information?

A. That may be true. I don't recall.

MR. ANDERSON: He has stated, sir, he did not recall any such meeting.

MR. KRESEL: He has now answered.

XQ. 1431. Look at that copy of a letter I now hand you. Do you recognize the handwriting of your employee, Mr. Pickerell, in that letter?

A. Yes, sir. That looks like Dr. Pickerell's letter.

XQ. 1432. Let me have it, please.

A. May I read it?

XQ. 1433. No, let me have it. All I asked you was to identify the handwriting.

A. (Witness returns letter to counsel.)

XQ. 1434. Now, I am going to ask you to read the letter and state whether that does not refresh your recollection about this conference that I have just been questioning you about?

A. I never saw the letter and I do not recall anything in connection with it, Mr. Kresel.

XQ. 1435. You say that that does not refresh your recollection?

A. No, not specially.

XQ. 1436. Now, don't let us misunderstand or fall between "specially" and "generally."

A. I do not recall any details connected with it; no, sir.

XQ. 1437. I didn't ask you about any details. I am asking you whether that does not refresh your recollection that you had the conference that I questioned you about, in Washington; that there were present Mr. Bennett and Mr. Pickerell, and that the statements that I embodied in my question were made?

A. There were many conferences. I do not deny it. Possibly. I don't recall, Mr. Kresel. That's all I can say—to the best of my knowledge and belief.

MR. KRESEL: I ask to have this paper marked for the present for identification.

THE COURT: Let it be so marked.

Marked Defendant's Exhibit H for Identification, 6-26-1923.

XQ. 1438. Mr. Metz, you testified yesterday that you had endorsed a note for Mr. Bennett in the sum of $5,000?

A. I think that was the amount; yes, sir.

XQ. 1439. You endorsed other notes at the Gotham National Bank, didn't you?

A. May I explain the conditions on which I endorsed them?

XQ. 1440. No, please first answer my question. Then you will explain.

A. Yes, I did.

XQ. 1441. You endorsed a note for $300,000, didn't you?

A. $300,000?

XQ. 1442. Yes.

A. Oh, no. $300,000?

XQ. 1443. Yes.

A. For who?

XQ. 1444. Now, wait a minute. Did you endorse a note for $300,000 for Mr. Bennett?

A. Certainly not—$300,000.

XQ. 1445. How much was it that you endorsed in addition to the $5,000?

A. There were various notes, as he paid off on the $5,000. I endorsed new notes as I recall it.

XQ. 1446. You mean that the total of your endorsements for Mr. Bennett was only $5,000?

A. That is my recollection, Mr. Kresel.

XQ. 1447. You mean that the maximum that you ever endorsed for him was $5,000?

A. To my recollection, yes. He had another note in a bank in Jersey when he was with the Dyers Trade Journal, that I endorsed for him, or some paper that he was on as co-endorser.

XQ. 1448. How much was that?

A. I don't recall the amount; $1200 or more.

XQ. 1449. About $1200?

A. That is my recollection. I had to pay one of them myself.

XQ. 1450. That is in addition to the $5,000?

A. Yes; and he paid off in installments.

XQ. 1451. Please don't let us travel away from the City of New York. Please confine yourself to the Gotham National Bank in New York?

A. Yes, sir.

XQ. 1452. To repeat the question, have you not endorsed for Bennett in that bank more than $5,000 of notes?

A. At one time, I don't think I did.

XQ. 1453. Did you endorse any notes for the

Manchester Union and the Manchester Leader, of Manchester, New Hampshire?

A. Not to my knowledge, no.

XQ. 1454. Or for anyone that used the proceeds of those notes for the purposes of those two publications?

A. I never heard of them before.

MR. ANDERSON: It seems to me, assuming that this evidence is admissible at all, that the limit of counsel's right to ask the question would be to specify whether he endorsed the note for specific persons; for certainly, it is rather general to ask a witness whether he endorsed a note for someone who used the proceeds for something.

THE COURT: It is very vague. Of course, it is cross-examination. I assume it is preliminary, to be followed up; is it not?

MR. KRESEL: Yes, sir.

THE COURT: If not, I do not see its value myself. If the witness recalls and is able to testify from such a general question, then a more specific one is not necessary. If he does not recall, and a more specific one is not asked, I see no benefit to be derived from answering the question.

XQ. 1455. Do you know Mr. J. A. Muehling?

A. Who?

XQ. 1456. J. A. Muehling?

A. A. J. R. Murling?

XQ. 1457. I may have his initials wrong.

A. I know such a man—A. J. R. Murling, yes.

XQ. 1458. Just for the purpose of identification, what is his business?

A. I do not know what he is doing now. He used to be with the Bayer Company years ago. He was their manager, if that is the man you mean.

XQ. 1459. No, that is not the man I mean; so we do not agree.

A. Then I do not recall, Mr. Kresel.

XQ. 1460. The man I am asking about is J. A. Muehling?

A. I do not recall such a name, Mr. Kresel.

XQ. 1461. You remember in April, 1922, you were in the United States, were you not?

A. April, 1922?

XQ. 1462. Yes.

A. I sailed in May.

XQ. 1463. You sailed away in May?

A. I went to Europe in May, 1922.

XQ. 1464. And were you in Europe in July, 1922?

A. Yes, sir.

XQ. 1465. In April, 1922, you remember visiting Mr. Bennett at his house on an occasion when he was ill?

A. Yes, sir; I recall that.

XQ. 1466. You visited him several times there, did you not?

A. Yes, sir. He was laid up for quite a while.

XQ. 1467. And you gave him money?

A. He borrowed money to pay his rent with on one occasion.

XQ. 1468. You gave him money?

A. Yes.

XQ. 1469. Now, in July, 1922, you were abroad?

A. Yes, sir.

XQ. 1470. You remember receiving a long letter from Mr. Bennett while you were abroad?

A. I think so.

XQ. 1471. Have you that letter?

A. No, sir.

XQ. 1472. Where is it?

A. I presume I destroyed it. I don't carry that kind of stuff.

XQ. 1473. Don't presume.

A. I am sure I did. I didn't bring those letters back.

XQ. 1474. That is an answer.

A. I am quite sure I destroyed it.

XQ. 1475. Will you tell the Court—and here you can make any explanation that you like—for what services you paid Bennett, for what services you endorsed notes for him, and for what services you paid notes of his in the bank?

A. A full explanation?

XQ. 1476. Go ahead; you have got the field open to you.

A. Yes, sir. Mr. Bennett was connected with the Color Trade Journal, which was the new journal of the color industry. He needed money to develop it, and the first note I understand was for that. Then he went into another journal—sort of a dry goods economist on that line—and I believe I endorsed their note for him. As I recall it, he paid off on installments the Gotham note. I had to pay one note of his that I recollect in a Jersey bank, I think over in New Jersey. Mr. Bennett was interested or had been interested with The Chemical Foundation and sent me a telegram calling for the first installment on the stock of The Chemical Foundation. Mr. Bennett was secretary of one of the dye manufacturing concerns, I forget which one, when it was organized, or shortly after it, and Mr. Bennett, in association with Dr. Matthews, had this dye journal, which was a very promising proposition, and which I was very glad to help him develop, and I think—no, he did not buy it; Merritt Matthews bought it, as I understand, bought out Bennett's interest, as I understand. Bennett was interested in the embargo, the dye embargo, which I opposed on general principles, opposed any embargo.

He conferred with Dr. Pickerell, who was formerly the chemist of the Appraiser Stores in New York, and later on, some years afterwards, I employed him as an expert on tariff matters, and in the laboratories, and he was in Washington on all those sessions. I think he conferred with Bennett and every one interested on those things. Those are the only cases I had an interest in or knew anything about. Bennett was living on Central Park West and several times came to me and said he needed money to pay his rent and other things, and I made it as a loan each time, and Bennett so understood it, and said, "As soon as I am able I will pay it back." That is the whole situation as I recall it, Mr. Kresel, and the only interest I had.

MR. KRESEL: That is all.

THE COURT: Do I understand, Mr. Kresel, that you want the production of some more books?

MR. KRESEL: I will during recess, your Honor, examine these papers.

THE COURT: You are through with cross-examination—

MR. KRESEL: Except for that.

THE COURT: Any re-direct, Colonel Anderson?

MR. ANDERSON: Yes, sir.

THE WITNESS: Will you take these now, Mr. Kresel (handing counsel papers). Your Honor, if you please, those are originals, and I would like to get them back eventually. They are my office records.

THE COURT: Mr. Metz requests, Mr. Kresel, that you return them to him at your convenience.

MR. KRESEL: Certainly.

THE WITNESS: There is no hurry, but I want to get them back eventually.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 1477. You have said that Mr. Bennett was the secretary of one of the dye manufacturers' associations. May I ask if he was Secretary of the American Dyes Institute?

A. I do not think he was Secretary of the American Dyes Institute. I think the one prior to that. I am not certain. The records would show that, Colonel; I am not certain. I do know this, however, Colonel Anderson—

MR. KRESEL: One minute, I object to that. The question has been answered.

RDQ. 1478. Were you a member of the association of which you understood he was secretary?

A. I don't recall. This was the beginning of these transactions. I do not remember. I was a member of the Dyes Institute, I recall that.

MR. KRESEL: I object to that. The answer is "I don't remember."

THE WITNESS: I don't remember; I cannot recall. The records would show.

RDQ. 1479. You have stated on direct examination, if I recall correctly, that you were a member of the American Dyes Institute?

A. Yes, sir.

RDQ. 1480. Mr. Metz, there were produced here and presented and marked for identification several contracts between—

MR. KRESEL: Colonel Anderson, may I interrupt you a minute. I do not want to take you by surprise. I propose to offer in evidence a number of letters that I used in the cross-examination of the witness, and with them in evidence you may want to use them to re-direct him. Therefore will you permit me to interrupt you to offer them now?

MR. ANDERSON: Yes, sir.

THE COURT: There is no objection to having them offered out of order?

MR. ANDERSON: Not the slightest.

THE COURT: Very well, then.

MR. KRESEL: I offer in evidence, if your Honor please, contract between the Dermatological Research Laboratories and the Farbwerke Hoechst Company, dated December 5, 1916, as to which I questioned the witness yesterday and which he identified. I have it here in this form (handing counsel).

MR. ANDERSON: I do not object to that, though I have not looked at it. I do not object to it.

THE COURT: Admitted.

THE WITNESS: I can give you a printed copy, Mr. Kresel, if you care for it.

MR. ANDERSON: I do not object to it, except that I make the general objection to which all this evidence is subject. I do not object to it as to form.

THE COURT: It is so understood, Colonel Anderson.

Received in evidence and marked "Defendant's Exhibit No. 5." (*See Exhibits, Vol. IV, page 2042.*)

THE WITNESS: If you want that, there is a printed copy and you can substitute that for the original (handing counsel).

MR. KRESEL: He has a printed copy and we can put that in.

MR. ANDERSON: Yes.

THE COURT: You may substitute that later if you desire.

MR. KRESEL: Very well, your Honor, I just want to make sure it is a copy.

THE COURT: You may compare it.

MR. KRESEL: If I may have the privilege, I will substitute it later.

THE WITNESS: I thought it was clearer, Mr. Kresel, that is all.

MR. KRESEL: I offer in evidence the agreement between the Dermatological Research Laboratories, Dr. Schamberg, Dr. Raiziss and Herman A. Metz, dated Philadelphia, June 8, 1918.

Received in evidence and marked "Defendant's Exhibit No. 6." (*See Exhibits, Vol. IV, page 2049.*)

MR. KRESEL: I offer in evidence a letter of James C. Sargent to the Journal of American Medical Association, printed in the issue of that magazine under date of March 30, 1918, which the witness identified.

Received in evidence and marked "Defendant's Exhibit No. 7." (*See Exhibits, Vol. IV, page 2052.*)

MR. KRESEL: I offer in evidence a letter from Dr. Hausser to Mr. Metz, dated June 20, 1913, which is printed at page 499 of the hearing before the Committee on Finance of the United States Senate, on H. R. 8078. And may I with the permission of the Court have the privilege of substituting typewritten copies of these letters which are printed in these books. There is no use putting the book in. We will give it a number now. That is the one of June 20, 1913.

Received in evidence and considered marked "Defendant's Exhibit No. 8" (to be furnished). (*See Exhibits, Vol. IV, page 2055.*)

MR. KRESEL: I offer in evidence letter from Dr. Haeuser to Mr. Metz, dated May 14, 1913, which appears at page 500 of this same volume of hearings before the Committee on Finance.

Received in evidence and considered marked "Defendant's Exhibit No. 9" (to be furnished). (*See Exhibits, Vol. IV, page 2057.*)

MR. ANDERSON: I will state as to these letters the form of the evidence is not objected to, but of course they are subject to the objections—

THE COURT: Each exhibit offered is admitted subject to your general and specific objections.

MR. KRESEL: I offer in evidence letter from Herman A. Metz to Dr. H. F. Albert, dated May 9, 1916, and the enclosure which went with that letter. I would suggest that the letter be marked Exhibit 10 and the enclosure 10-A.

THE COURT: Let them be so marked.

Same received in evidence and marked "Defendant's Exhibits 10 and 10-A" respectively. (*See Exhibits, Vol. IV, page 2059.*)

MR. KRESEL: I offer in evidence letter from Herman A. Metz to Joseph P. Tumulty, The White House, Washington, D. C., dated April 8, 1915, printed at pages 268 to 271 inclusive, of the volume of Hearings before a subcommittee of the Committee on the Judiciary, United States Senate, on Senate Resolution No. 77.

Received in evidence and considered marked "Defendant's Exhibit No. 11" (to be furnished). (*See Exhibits, Vol. IV, page 2065.*)

MR. KRESEL: I will put in typewritten copies of all of these. I offer in evidence a letter from Herman A. Metz to Woodrow Wilson, President of the United States, dated November 7, 1914, and printed at page 775 of the hearings before the Committee on Judiciary.

Received in evidence and considered marked "Defendant's Exhibit No. 12" (to be furnished). (*See Exhibits, Vol. IV, page 2072.*)

MR. KRESEL: I offer in evidence letter from one Blank to Herman A. Metz, dated August 5, 1915, and printed at page 668 of the volume of hearings before the Committee on Ways and Means of the House of Representatives on H. R. 2706.

Received in evidence and considered marked Defendant's Exhibit No. 13 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2323.*)

MR. KRESEL: I offer in evidence another letter from Blank to Herman A. Metz, dated September 28, 1915, and also printed on page 668 of that volume.

Received in evidence and considered marked Defendant's Exhibit No. 14 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2351.*)

MR. KRESEL: I offer in evidence another letter from Blank to Herman A. Metz, dated November 12, 1915, also printed at page 668 of that volume.

Received in evidence and considered marked Defendant's Exhibit No. 15 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2352.*)

MR. KRESEL: I offer in evidence a letter from Dr. Haeuser to Mr. Metz, dated March 30, 1914, printed at page 509 of the volume containing the hearings before the Committee on Finance of the United States Senate, on H. R. 8078.

Received in evidence and considered marked Defendant's Exhibit No. 16 (to be furnished.) (*See Exhibits, Vol. IV, page 2077.*)

MR. KRESEL: I offer in evidence a letter from Dr. Haeuser to Mr. Metz, dated July 31, 1913, and printed at page 677 of the hearings before the Committee on Ways and Means of the House.

Received in evidence and considered marked Defendant's Exhibit No. 17 (to be furnished). (Included in Defendant's Exhibit No. 52. *See Record, Vol. IV, page 2344.*)

MR. KRESEL: I offer in evidence a letter from Mr. Metz to Honorable Robert F. Rose, Foreign Trade Adviser, Washington, D. C., dated October 23, 1914, printed at page 7766 of the hearings be- the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 18 (to be furnished). (*See Exhibits, Vol. IV, page 2080.*)

MR. KRESEL: I offer in evidence a letter from Herman A. Metz to Woodrow Wilson, President of the United States, dated June 16, 1915, and printed at page 274 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 19 (to be furnished). (*See Exhibits, Vol. IV, page 2081.*)

MR. KRESEL: I offer in evidence a letter from Herman A. Metz to Honorable William J. Bryan, Secretary of State, Washington, D. C., dated March 6, 1915, printed at page 255 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 20 (to be furnished). (*See Exhibits, Vol. IV, page 2083.*)

MR. KRESEL: I offer in evidence a telegram from Charles A. Holder, Foreign Trade Adviser, to Mr. Metz, printed at page 779 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 21. (*See Exhibits, Vol. IV, page 2083.*)

MR. KRESEL: I offer in evidence a letter from

the Farbwerke-Hoechst Company. I can not read the name of the person who has signed it. Could you not help me with that (handing witness)?

THE WITNESS: That is J. H. Martin. That is one of my clerks.

MR. KRESEL: Signed by Farbwerke-Hoechst Company, J. H. Martin, addressed to Drs. Brown and Jack, Decatur, Illinois, April 26, 1917. That will be marked now.

Received in evidence and marked Defendant's Exhibit No. 22. (*See Exhibits, Vol. IV, page 2084.*)

MR. KRESEL: I offer in evidence a letter from Herman A. Metz to Dr. G. W. McCoy, dated March 14, 1919, printed at page 839 of the hearings before the Committee on the Judiciary.

Received in evidence and considered marked Defendant's Exhibit No. 23 (to be furnished). (*See Exhibits, Vol. IV, page 2085.*)

MR. KRESEL: I offer in evidence a letter from Edward W. Dieters to Mr. Metz, addressed as "My dear Colonel," dated October 24, 1922.

Received in evidence and marked "Defendant's Exhibit No. 24." (*See Exhibits, Vol. IV, page 2086.*)

MR. KRESEL: I offer in evidence as a separate exhibit the enclosure that came with that letter.

Received in evidence and marked "Defendant's Exhibit No. 24-A." (*See Exhibits, Vol. IV, page 2087.*)

MR. KRESEL: I offer in evidence the letter now marked Defendant's Exhibit H for identification.

Received in evidence and marked "Defendant's Exhibit No. 25." (*See Exhibits, Vol. IV, page 2088.*)

MR. KRESEL: That is all, your Honor.

THE COURT: Each is admitted subject to the general and specific objections of the Government.

MR. ANDERSON: If the Court please, there are a number of these documents of yesterday that I have not been able to examine. It is within ten minutes of the time of recess. Would it be agreeable to the Court to take the recess at this time and convene ten minutes earlier?

THE COURT: No, we will meet at the same time. We will take a recess until one o'clock Standard time.

RDQ. 1481. You identified on cross-examination an agreement of November 12, 1902, between the German firm mentioned therein and the Consolidated Color and Chemical Company, which I think you said was one of your companies, is that true?

A. Yes, that was changed in the other contracts. They were continuing contracts as to my agency for their products, that is all, that feature of it.

MR. ANDERSON: As this paper was not offered in evidence, I would like to make a reoffer. I now offer in evidence this paper which has been identified as Exhibit C for Identification, of the defendant, to be read as Plaintiff's Exhibit No. 407.

MR. KRESEL: Just our general objection, your Honor, as to materiality and relevancy.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 407." (*See Exhibits, Vol. II, page 762.*)

RDQ. 1482. There was also identified by you on yesterday another agreement dated August 4, 1905, between certain German firms and H. A. Metz and the Consolidated Color Company. This was one of the same series to which you referred?

A. Yes, sir, the continuation of the previous one.

MR. ANDERSON: We offer in evidence the agreement already identified and mentioned above, dated August 4, 1905, to be read as Plaintiff's Exhibit No. 408.

THE COURT: Admitted under the same conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 408." (*See Exhibits, Vol. II, page 782.*)

MR. ANDERSON: I should have offered preceding the former agreement, but do now offer the agreement of September 26, 1904, which was identified by the witness on yesterday and marked for identification Defendant's Exhibit E, between the German firms mentioned and Herman A. Metz and others. I now offer that agreement in evidence, to be identified and read as Plaintiff's Exhibit No. 409.

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 409." (*See Exhibits, Vol. II, page 792.*)

MR. ANDERSON: The witness also identified on yesterday an agreement dated the 22nd day of July, 1912, between the German firms mentioned therein, and Herman A. Metz, H. A. Metz & Company, Victor Koechl & Company, which was marked for identification as Defendant's Exhibit F. I ask that the same be identified as Plaintiff's Exhibit No. 410.

THE COURT: Admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 410." (*See Exhibits, Vol. II, page 797.*)

RDQ. 1483. Colonel Metz, you stated on yesterday that there was another agreement dated in 1913. Have you a copy of that agreement?

A. I have not. That is in the Court in Detroit. I have not got a copy.

RDQ. 1484. Have you made a search for it?

A. I did, sir, before I came down.

RDQ. 1485. By reference to one of the exhibits of the Answer, found at page 88 of the printed Answer in this cause, I find the following statement:

> "A prolonged negotiation ensued, the Germans being very reluctant to make any change. At last, in the summer of 1913, it was arranged that the 1,990 shares held by the German concern should be transferred on the books to Mr. Metz; that in return he should execute a demand promissory note without interest for the sum of $597,000; that the note should be delivered to the German company and the stock, together with a suitable transfer properly executed, should be deposited to the sole order of the German concern in a Montreal bank, as security for the note."

Can you state whether the transaction there mentioned is the matter covered by the agreement of 1913, which you have been unable to find?

MR. KRESEL: We object to the question upon the ground, first, that it is not proper re-direct; secondly upon the ground that it is immaterial and irrelevant; third, upon the ground that the instrument speaks for itself and that this witness can not interpret in the way that he is undertaking to do.

If you have a copy of the agreement, Colonel Anderson, I shall not object to your putting it in.

MR. ANDERSON: No, I have not. I can not find a copy and I can not locate the original. I will state to your Honor that we have tried to find it. The witness of course has not been able to go to New York himself to get it. We have done everything we could to find it.

In addition to that, as to the first point, I think the cross-examination opened up this entire subject and it certainly would not be fair to the witness to put in a part of his series of transactions and not put in all, that the full truth may appear.

I recognize the entire right of counsel on cross-examination to limit it to such inquiry as he thinks is appropriate to his particular position, but in the interest of re-direct, I have the right to put in evidence of the entire transaction for the consideration of the Court. If I had the agreement or a copy, I would produce it.

MR. KRESEL: Colonel, may I direct your attention to the statement of the witness on cross-examination that there was a copy of it printed in one of those records. Maybe you can locate it that way.

MR. ANDERSON: We have made a search and can not locate that contract in the record. If we can, I will be glad to produce it.

MR. KRESEL: I want to say to your Honor and Colonel Anderson, for your information, that I am pretty familiar with these records before Congressional committees and I do not remember ever having seen any copy of that instrument, nor have I ever seen the original.

MR. ANDERSON: Well, that is my experience, sir. I did not know anything about it until this matter was brought up on cross-examination.

THE COURT: Whether it is re-direct, in order that it may possibly make it unnecessary for you to recall the witness I will let you take it so far as that point is concerned under the general rule, because it is only a question as to whether there would be further examination upon it.

MR. ANDERSON: I would not object to it, sir.

THE COURT: The second point is that it is im-

material. On that ground I have found it necessary to lay down a general rule to take whatever counsel believes is material, because of the many conflicting views—that is, in view of the fact that your views vary with respect to all matters in this case except one single one. With respect to a conclusion, I think at the moment that question does call for a conclusion, Colonel Anderson. Won't you have the question read to you?

MR. ANDERSON: I think the question does call for a conclusion but I merely want to identify the character of the transaction from that evidence. I will put the question this way:

RDQ. 1486. Can you state whether the agreement of 1919 to which you refer related to the sale or alleged sale to you of the 1990 shares of stock mentioned in the paragraph of the Answer which I have read?

MR. KRESEL: I won't object.

THE COURT: You will not?

MR. KRESEL: I will not object.

A. It did, and I know where there is a copy, I think.

MR. ANDERSON: If your Honor please, I will ask this question:

RDQ. 1487. Did you have a suit in the United States District Court for the Southern District of New York in which H. A. Metz was complainant and Francis P. Garvan as Alien Property Custodian was the defendant, in which this transaction was involved?

MR. KRESEL: I object to that on the ground that it is immaterial and irrelevant; further, upon the ground that it calls for the witness's conclusion as to what was involved in the suit.

MR. ANDERSON: I think upon technical grounds, possibly the second part, that it is a conclusion, would be a good objection; but it was

merely leading up and as an inducement to something I wanted to introduce. I did not want him to say what was in the suit, but whether it related to this agreement, whether that agreement was involved.

MR. KRESEL: Further I urge the objection that it is not re-direct. In fact I understand your Honor has ruled generally—

THE COURT: No, I have ruled with respect to the other matter, because it would require a great many niceties probably to inquire whether all these are proper or not. But Colonel Anderson says he will have no objection to your re-cross examination—

MR. ANDERSON: Not the slightest.

THE COURT: With respect to any matters you want to inquire about. In that case, it seems to me the objection that it is not re-direct falls. But I think, Colonel Anderson, you are right that it does fall unless it is pure inducement to something else, and more by way of recital than a statement of fact. If that fact becomes material to your part of the case, I take it you do not ask me to accept this statement as binding?

MR. ANDERSON: I will not, sir. It could only be possible as connecting up.

THE COURT: I will take the answer and I will see what the next questions are and then determine it.

A. What was the question, Colonel, please?

(RDQ. 1487 repeated as recorded above.)

MR. ANDERSON: I will change it, the latter part, to read: "In which this contract was involved." I will put it that way.

A. Yes, sir.

MR. KRESEL: Which contract?

MR. ANDERSON: The contract of 1913 was in-

volved. I merely want to bring that out. I should have said at the beginning, though I did not, that in my re-direct examination on these points I still reserve my objections to the evidence on them opened up on cross-examination.

THE COURT: I do not understand you have waived them.

MR. KRESEL: I think we are assuming that, Colonel, from the very beginning—that you never abandon anything.

MR. ANDERSON: If your Honor please, I now wish to offer in evidence the unreported opinion of Judge Mayer, the District Judge in the case of Metz against Garvan, Alien Property Custodian, which opinion was rendered on the 2nd day of June, 1921. If it were reported, I would not offer it.

THE COURT: As tending to show what?

MR. ANDERSON: As tending to show that in the absence of all—

MR. KRESEL: Colonel, will you permit me to interrupt you?

MR. ANDERSON: Yes.

MR. KRESEL: You are misinformed as to its not being reported. It is reported.

MR. ANDERSON: In what book?

MR. KRESEL: It is reported in the Federal Reporter, of course.

MR. ANDERSON: If it is reported in the Federal Reporter, of course I do not want to offer the opinion, and I withdraw it.

MR. KRESEL: If you desire I will give you the citation.

MR. ANDERSON: I withdraw it and ask that the entire reference to that matter be stricken out.

I now ask leave to offer in evidence a certified copy of a decree of the United States District

Court for the Southern District of New York in the case of Herman A. Metz, plaintiff, against Francis P. Garvan, as Alien Property Custodian and successor in office to A. Mitchell Palmer, as defendant.

MR. KRESEL: May I see it first?

MR. ANDERSON: Certainly (handing counsel).

MR. KRESEL: Your Honor, we object to the introduction of this decree. I am not objecting to it upon the ground of incompetency and that it is a copy; but I am objecting to it upon the ground that it is immaterial and irrelevant; that a decree between Mr. Metz, and Mr. Garvan as Alien Property Custodian, is not evidence against this defendant; that it appears from the face of the instrument that it has no reference to the patents here in suit; that if the decree goes in at all I shall ask that the entire record of the case go in, so that the Court may be able to determine what relevancy or materiality there is in the decree, judging by what was being litigated in the action, and in order that the Court may have before it the complaint and the answer and any other pleadings in the case, so as to see what issues there were in the case and what evidence there was to support this decree.

I think from any point that it is viewed, this is immaterial and irrelevant and not binding upon this defendant, and we therefore object.

MR. ANDERSON: Counsel is, I concede, well within his rights in insisting that the remainder of the Court record go in. I recognize that; and if counsel desire that, then while I shall not object in any way to having the entire record here, for the purpose of making this record within some reasonable bounds, I shall withdraw this decree certainly for the present in order to have it certi-

fied. If I reach the conclusion that I must introduce it, I will do so later; but simply for the service of the record, I will withdraw that order, the opinion is sufficient.

RDQ. 1488. Colonel Metz, you were asked on cross-examination about negotiations looking to the importation of German dyestuffs in the years 1914, 1915 and 1916, and certain correspondence was introduced either to or from you bearing upon that subject. I would ask if you have any other original correspondence on that subject. If so, I will ask you to produce it.

A. Yes, sir, I have quite a number of letters from the State Department and from other officials.

RDQ. 1489. Will you let me have it?

A. (Witness hands papers.)

RDQ. 1490. I hand you what purports to be a telegram addressed to you and signed by W. J. Bryan, Secretary of State, and ask you if you can identify that as having been received by you?

A. Yes, sir.

MR. ANDERSON: We offer in evidence a telegram dated Washington, August 21, 1914, addressed to Honorable Herman A. Metz, House of Representatives, signed W. J. Bryan, Secretary of State, to be identified and read as Plaintiff's Exhibit No. 411.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 411." (*See Exhibits, Vol. II, page 813.*)

MR. ANDERSON: I will read this correspondence, as the remainder has been read, so your Honor can have the whole thing before you.

MR. KRESEL: I did not read it all, but I have no objection to your reading it.

MR. ANDERSON: You read that part that in-

terested you; so I will read this. The telegram is as follows. (Reading.)

RDQ. 1491. I hand you a telegram dated August 23, 1914——

MR. KRESEL: I will assume he will say that he received these things or sent them, whichever it is.

MR. ANDERSON: They are all original papers and we agree, without having him identify them, that they may be introduced.

MR. KRESEL: Not without having him identify them, but without putting you to the trouble of asking him. May I just see them as you offer them, to see if I have any objection.

THE COURT: Will you offer such as you desire to offer, and when you have finished, I will admit them all subject to such general and specific objection as may now or hereafter be made by the defendant.

MR. ANDERSON: Telegram dated Washington, August 23, 1914, addressed to Honorable Herman A. Metz, House of Representatives, Washington, signed "Bryan," to be identified and read in evidence as Plaintiff's Exhibit No. 412. (Reading.)

THE COURT: Admitted.

Exhibit No. 412." (*See Exhibits, Vol. II, page 814.*)

MR. ANDERSON: I offer in evidence telegram dated September 17, 1914, addressed to Honorable Herman A. Metz, signed "Robert Lansing, Acting Secretary of State," to be identified and read as Plaintiff's Exhibit No. 413. The telegram is as follows (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 413." (*See Exhibits, Vol. II, page 814.*)

MR. ANDERSON: I offer in evidence carbon copy of a letter dated September 18, 1914, ad-

dressed to Honorable Robert A. Lansing, Acting Secretary of State, Washington, D. C., and initialed "H. A. M."

RDQ. 1492. You signed the original of that letter, did you not?

A. Yes, sir.

MR. ANDERSON: For convenience of the record, I will put his name at the bottom of that letter, with the consent of counsel.

THE COURT: Admitted.

MR. ANDERSON: The letter reads as follows (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 414." (*See Exhibits, Vol. II, page 815.*)

MR. ANDERSON: I offer in evidence letter dated September 22, 1914, addressed to Honorable Herman A. Metz, signed Robert Lansing, Acting Secretary of State, to be identified and read as Plaintiff's Exhibit No. 415. (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 415." (*See Exhibits, Vol. II, page 816.*)

MR. ANDERSON: I offer in evidence a letter from W. B. Fleming, Foreign Trade Adviser to the Department of State, to the Honorable Herman A. Metz, dated September 23, 1914, referring therein to two telegrams or drafts of telegrams attached as exhibits with the letter, all of which I ask to be identified, respectively, as Plaintiff's Exhibits Nos. 416, 416-A and 416-B. The letter is as follows (reading).

Received in evidence and marked "Plaintiff's Exhibits Nos. 416, 416-A and 416-B" respectively. (*See Exhibits, Vol. II, pages 817, 818.*)

MR. ANDERSON: I offer in evidence a telegram dated October 9, 1914, to Honorable Herman A. Metz, New York, signed Robert Lansing, Acting

Secretary of State, to be identified and read as Plaintiff's Exhibit No. 417 (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 417." (*See Exhibits, Vol. II, page 819.*)

RDQ. 1493. Do you know who Mr. Poucher was?

A. Mr. Morris R. Poucher, Vice-President of Badische Company in New York, who went to Europe to meet the Matanzas.

RDQ. 1494. Do you know of your own knowledge whether Mr. Poucher was active in undertaking to secure the importation of dyestuffs?

A. He was; went over for that purpose.

MR. ANDERSON: I offer in evidence a communication dated at Rotterdam, October 10, 1914, embargo on an export of dyestuffs from Germany, signed by S. Listoe, Consul General.

Received in evidence and marked "Plaintiff's Exhibit No. 418." (*See Exhibits, Vol. II, page 820.*)

RDQ. 1495. Do you know from what place you got this record?

A. Sent to me by the State Department.

MR. ANDERSON: The communication is as follows. (Reading Plaintiff's Exhibit No. 418.)

I offer in evidence original telegram dated October 16, 1914, addressed to Honorable Herman A. Metz, signed "Robert Lansing, Acting Secretary of State," to be identified and read in evidence as Plaintiff's Exhibit No. 419. The telegram is as follows. (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 419." (*See Exhibits, Vol. II, page 822.*)

MR. ANDERSON: I offer in evidence letter dated October 14, 1914, addressed to Honorable H. A. Metz, New York City, signed "Robert F. Rose, Foreign Trade Adviser," to be identified and read

in evidence as Plaintiff's Exhibit No. 420. (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 420." (*See Exhibits, Vol. II, page 823.*)

RDQ. 1496. Who was Charles H. Burr, do you know?

A. Charles H. Burr was the counsel for the committee that took up the investigation of abuses in the dyestuff industry with Mr. A. M. Patterson and his organization.

RDQ. 1497. Was that the textile organization?

A. Later on it became the Textile Alliance.

MR. ANDERSON: I offer in evidence telegram to Honorable Herman A. Metz, dated October 27th, 1914, signed "Robert Lansing, Acting Secretary of State," to be identified and read in evidence as Plaintiff's Exhibit No. 421. The telegram reads as follows. (Reading.)

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 421." (*See Exhibits, Vol. II, page 824.*)

MR. ANDERSON: I offer in evidence letter to Honorable Herman A. Metz, dated October 29th, 1914, signed "Robert Lansing, Acting Secretary of State," which will be found in the record of the Senate Committee Hearing on Resolution No. 77, page 775.

MR. KRESEL: No objection.

MR. ANDERSON: I will try to furnish a copy later. The letter is as follows. (Reading.)

THE COURT: Admitted.

Received in evidence, to be considered marked "Plaintiff's Exhibit No. 422." (*See Exhibits, Vol. II, page 825.*)

RDQ. 1498. Who was Count von Bernstorff?

A. German Ambassador.

RDQ. 1499. German Ambassador to the United States?

A. Yes, sir.

MR. ANDERSON: I next offer in evidence a letter dated November 19, 1914, to the Honorable Herman A. Metz, signed Robert Lansing, Acting Secretary of State, to be marked Plaintiff's Exhibit No. 423.

Received in evidence and marked "Plaintiff's Exhibit No. 423." (Read by Mr. Anderson.) (*See Exhibits, Vol. II, page 826.*)

RDQ. 1500. The letter of November 7, 1914, that you referred to this morning, is that the letter that counsel for the defendant introduced in evidence before luncheon, do you recall?

A. I did not see what he introduced there, sir, but this is a copy of the letter I wrote to the President. There is another page missing. I presume it is among those introduced, I am not certain. There were several letters.

MR. KRESEL: The letter is in evidence, I assume.

MR. ANDERSON: I will state that it is agreed the letter is the same as the one introduced by counsel.

THE WITNESS: I am not quite certain that we had that letter, Colonel. I would like to make sure, because that is an important one in the record, under the circumstances.

MR. ANDERSON: I will verify it. I now offer in evidence a letter dated November 12, 1914, to Honorable James W. Gerard, signed by W. J. Bryan, on the letterhead of the State Department at Washington, to be read as Plaintiff's Exhibit No. 424.

Received in evidence and marked "Plaintiff's Exhibit No. 424" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 826.*)

RDQ. 1501. Mr. Metz, did you take that letter with you to Germany in 1914?

A. I did, yes, sir.

RDQ. 1502. Did you present it to Mr. Gerard, the Ambassador?

A. He handed it back to me and told me keep it as a souvenir. I did not need any introduction.

RDQ. 1503. Do you want it as a souvenir? If so, I will produce copies.

A. I should like to have all those back. I may need those again.

MR. ANDERSON: Will your Honor permit, with consent of counsel, that we substitute copies for these originals; and if so substituted, return the originals?

MR. KRESEL: No objection.

THE COURT: Copies then may be substituted.

MR. ANDERSON: I offer in evidence cable dated December 2nd, 1914, from Rome, for department. The paper is headed, "Paraphrase of text of cipher telegram received December, 1914," and is signed by Nelson Page, American Ambassador (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 425." (*See Exhibits, Vol. II, page 827.*)

RDQ. 1504. What is indanthrene?

A. Indanthrene was a patented color, or a series of patented colors, controlled by the Badische Company, now the Kuttroff, Pickhardt & Company, of which Mr. Poucher was Vice-President.

RDQ. 1505. Is that an important dyestuff material?

A. Very important dyestuff.

RDQ. 1506. Indigo was also a patented material at that time, was it not?

A. Indigo itself was not patented. The process for manufacturing synthetic indigo was patented.

RDQ. 1507. But the indanthrene was a patented product?

A. The product was patented as well as the process. It covered a number of indanthrene vat colors.

MR. ANDERSON: I offer in evidence telegram dated December 8, 1914, to H. A. Metz, New York, signed "W. J. Bryan, Secretary of State." (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 426." (*See Exhibits, Vol. II, page 829.*)

MR. ANDERSON: I next offer in evidence telegram dated January 18, 1915, to Herman A. Metz, signed "W. J. Bryan, Secretary of State." (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 427." (*See Exhibits, Vol. II, page 830.*)

MR. ANDERSON: I next offer in evidence a copy of a letter dated September 3, 1915, addressed to the Secretary of State and signed "W. G. McAdoo, Secretary," on the letterhead of the Treasury Department. I suppose the Court will take judicial notice of the fact that Mr. McAdoo was Secretary of the Treasury at that time (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 428." (*See Exhibits, Vol. II, page 830.*)

RDQ. 1508. I note that this letter which I have just read from the Secretary of the Treasury to the Secretary of State states that the Treasury Depart-

ment has requested you to deliver 500 tubes of salvarsan and 200 tubes of neosalvarsan at $2.25 per tube free of duty. Do you know whether you actually delivered those goods or not and whether they were imported?

A. I would have to refresh my memory. I assume I did, undoubtedly. If they came here, they were delivered.

MR. ANDERSON: I offer in evidence a letter dated November 8, 1915, addressed to Mr. Metz, signed by Frank L. Polk, Counsellor to the State Department.

MR. KRESEL: Are you sure that is in his official capacity?

MR. ANDERSON: I am not at all sure about it. This appears to be official. This is to be read in evidence as Plaintiff's Exhibit 429, together with a copy of a communication signed "Lansing" attached thereto, to be read in evidence as Plaintiff's Exhibit 429-A. The letter is as follows (reading).

THE COURT: Admitted.

Received in evidence and marked respectively Plaintiff's Exhibits 429 and 429-A. (*See Exhibits, Vol. II, pages 831, 832.*)

MR. ANDERSON: If your Honor please, I will merely state that the enclosure is a long telegram addressed to the American Embassy at Paris, which appears to have been sent to the American Embassy at London also, containing instructions, information and data as to the importation of salvarsan, neosalvarsan and novocain, and measures to be taken to procure the free movement thereof through the blockade.

I offer in evidence letter from the Department of State dated January 6, 1916, to Mr. Herman A. Metz, signed, "For the Secretary of State,

Alvey A. Adee, Second Assistant Secretary," together with typewritten enclosure, what appears to be a copy of telegram from American Embassy at Berlin, signed with stamp "James W. Gerard," to be identified and read in evidence as Plaintiff's Exhibits 430 and 430-A. (Reading.)

THE COURT: Admitted.

MR. ANDERSON: The telegram from Mr. Gerard merely relates to the same matter, the substance of which is stated therein.

Received in evidence and marked "Plaintiff's Exhibits 430 and 430-A," respectively. (*See Exhibits, Vol. II, pages 835, 837.*)

MR. ANDERSON: I offer in evidence a telegram dated Washington, February 8, 1916, addressed to Herman A. Metz, signed "Charles A. Holder, Foreign Trade Adviser," to be read in evidence.

MR. KRESEL: That is already in evidence. I put it in.

MR. ANDERSON: I am informed that the telegram I have just offered has already been introduced by counsel for the defendant. I will withdraw the offer in order to avoid duplication of the record.

MR. KRESEL: What is the date of it? I do not want to mislead you.

MR. ANDERSON: It is February 8, 1916, Mr. Kresel, addressed to Herman A. Metz.

MR. KRESEL: Yes, that is in as Exhibit No. 21.

MR. ANDERSON: I offer in evidence copy of the telegram or cable dated New York, February 9, 1916, addressed to Farbwerke-Hoechst, Main, Germany, signed "Herman Metz," as Plaintiff's Exhibit No. 431.

Received in evidence and marked "Plaintiff's Exhibit No. 431" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 837.*)

RDQ. 1509. I show you, Mr. Metz, an original letter from Mr. Adee, Second Assistant Secretary of State, dated February 3, 1916, in which he refers to a letter from you dated January 17, 1916. Have you that letter or a copy of it?

A. Probably, in one of my bags. It is an official letter. May I say, Colonel Anderson, that these things have been back and forth and in Court so many times that I am losing them one by one. That is the reason I want to keep them this time. They have gone astray.

XQ. 1510. You have not in the papers that you have with you a copy of the paper showing these details?

A. No.

MR. ANDERSON: Now I offer in evidence an original letter dated February 3, 1916, addressed to Honorable Herman A. Metz and signed for the Secretary of State, Alvey E. Adee, to be read in evidence as Plaintiff's Exhibit No. 432.

Received in evidence and marked "Plaintiff's Exhibit No. 432" and read by Mr. Anderson. (*See Exhibits, Vol. II, page 838.*)

MR. ANDERSON: I offer in evidence a telegram addressed to Herman Metz, dated February 12, 1916, from Farbwerke-Hoechst, to be identified as Plaintiff's Exhibit No. 433.

Received in evidence and marked "Plaintiff's Exhibit No. 433." (*See Exhibits, Vol. II, page 839.*)

MR. ANDERSON: The telegram is as follows (reading).

I offer in evidence a letter dated February 10, 1916, to Charles A. Holder, Foreign Trade Adviser from State Department, to Herman A. Metz, to be identified as Plaintiff's Exhibit 434.

Received in evidence and marked "Plaintiff's

Exhibit No. 434." (*See Exhibits, Vol. II, page 839.*)

MR. ANDERSON: The letter is as follows (reading).

I offer in evidence letter dated February 10, 1916, to Herman A. Metz, signed Charles A. Holder, Foreign Trade Adviser to State Department.

Received in evidence and marked "Plaintiff's Exhibit No. 435." (*See Exhibits, Vol. II, page 840.*)

(Letter read by Mr. Anderson.)

MR. ANDERSON: I offer in evidence a telegram dated Washington, February 28, 1916, to Mr. Herman A. Metz, signed Robert Lansing, Secretary of State.

Received in evidence and marked "Plaintiff's Exhibit No. 436." (*See Exhibits, Vol. II, page 841.*)

(Letter read by Mr. Anderson.)

MR. ANDERSON: I offer in evidence letter dated March 11, 1916, to Mr. Herman A. Metz, signed Charles A. Holder, Foreign Trade Adviser.

Received in evidence and marked "Plaintiff's Exhibit No. 437." (*See Exhibits, Vol. II, page 841.*)

(Letter read by Mr. Anderson.)

MR. ANDERSON: I offer in evidence letter dated March 23, 1916, to Herman A. Metz, signed Alvey A. Adee, Second Assistant Secretary.

Received in evidence and marked "Plaintiff's Exhibit No. 438." (*See Exhibits, Vol. II, page 843.*)

(Letter read by Mr. Anderson.)

MR. KRESEL: Are those all, Colonel, because I now want to put my objection on the record.

MR. ANDERSON: Yes.

MR. KRESEL: I understood your Honor to suggest that we withhold our objection and your Honor's rulings until all of them have been offered. We now object to the introduction of these letters and telegrams upon the ground that they are immaterial and irrelevant.

THE COURT: They will be received under our general rule.

RDQ. 1511. Were you or were you not in constant touch with the State Department during the period of these negotiations in 1915 and 1916?

A. Yes, sir, constantly.

RDQ. 1512. Mr. Metz, I think you have already testified you were born in the United States, have you not?

A. City of New York, yes, sir.

RDQ. 1513. You have been rather satirically called "Colonel Metz" a number of times by my friend, the counsel for the defendant. Are you entitled to that title?

A. Yes, sir; I am.

RDQ. 1514. If so, for what reason?

MR. KRESEL: I object as entirely immaterial and irrelevant whether this man is Colonel Metz or not Colonel Metz. You are the one who was calling him Colonel Metz when you put him on the witness stand. I did not know anything about it.

MR. ANDERSON: The loyalty of this witness has, in a sense, at least by inference, been assailed; and I want to show that he has been in the public service and military service of the United States.

THE COURT: You may show it, but so far as I recall, he was first called "Colonel Metz" by you.

MR. ANDERSON: He was called that by me because I was informed that was his title.

THE COURT: If you think it is material, you may show how he came by the title.

MR. ANDERSON: I do, under the circumstances of this case. Otherwise, it would be utterly immaterial what his title was.

RDQ. 1514 (continuing). Will you answer the question?

A. I served in the New York National Guard about fifteen years. I was first lieutenant, then captain. I was in the Reserves when the war started and immediately when the United States went in, I rejoined my old regiment as Lieutenant Colonel, remained Lieutenant Colonel for about three years, and was then promoted to the staff of the Adjutant General of the State of New York as full Colonel, and I am now in the Reserves since the first of last January.

RDQ. 1515. You were asked on cross-examination, whether as a member of Congress you succeeded in getting indigo put on the free list. Can you say whether or not the representatives of the textile industry demanded that indigo be put on the free list at that time.

A. The consumers did.

MR. KRESEL: One minute.

THE WITNESS: I beg your pardon.

MR. KRESEL: I object to the question on the ground that it is immaterial and irrelevant as to what the textile industry requires. Moreover, I object to it on the ground that the desires of an industry like that must be shown by documentary proof and that we can not be bound, if it is material, by the conclusion or the opinion of this witness as to what the industry desired.

MR. ANDERSON: All right. I will put the question differently.

RDQ. 1516. Do you know whether the representatives of the textile industry appeared before com-

mittees of Congress at that time and urged the putting of indigo on the free list?

MR. KRESEL: I object to that on the ground that it calls for this witness's conclusion and interpretation as to what representatives of the industry asked Congress to do. If any such appeared before any committee of Congress, there is a way of showing it by the records of the committee.

RDQ. 1517. Then I will ask you this: What was your understanding of the desires of the industry as a member of Congress?

MR. KRESEL: I object to what this witness's understanding was of the desire of the industry, whether he was a member of Congress or not.

MR. ANDERSON: If your Honor please, I put the question in three forms so as to avoid objection. But it goes deeper than that. The effort was made here to show that this witness while a member of Congress was instrumental in putting indigo upon the free list, the implication being that he was acting in the interest of German shippers. I objected then to it as immaterial and I thought it was utterly immaterial, because it had absolutely nothing to do with whether this sale of patents was valid or invalid, and we are not here trying the loyalty of a witness, as I understand it. But in view of that inquiry I regarded as both fair to the case and fair to the Government that the position of those directly interested in this industry and using this dye should be stated as the witness understood it, since his motive in Congress has been challenged.

THE COURT: Isn't that question open to objection? Would he not be required to disclose the facts rather than his understanding the facts? So far as I recall the other evidence to which you re-

fer, it was evidence by documents which were produced. I do not see how you can ask this witness what his understanding of the desire of the industry would be.

MR. ANDERSON: I have put the question in three forms, if your Honor please, to meet that. I agree there were technical objections to one or two of the questions. I think, however, the witness can testify whether representatives of the industry—and if further detail is desired, what representatives—appeared before the committees of Congress, if he knows, and what branch of the industry, whether textile or dye, and urged this action. It is not necessary that it should be in writing; these things are conducted personally. Four-fifths of the expressions of the will of the people brought to the attention of Congress are not in writing.

THE COURT: I have no objection to your disclosing the facts evidenced by your question, but I think the last question is open to the objection made by Mr. Kresel. However, I shall apply the general rule if you want me to.

MR. ANDERSON: I will ask this question to try and meet as far as I can the technical objection:

RDQ. 1518. Speaking of your own knowledge, do you know whether persons representing or claimed to represent textile institutions and industries in the United States, came to Washington at the time that indigo was put on the free list and urged that it be free from duty in the interests of American industry?

MR. KRESEL: I object to that question upon the ground hitherto urged, that this is not the proper way to prove what was requested of Congress or of a committee of Congress, by anybody. May I direct your Honor's attention to the testimony that this witness gave to which counsel is

now trying to apply this present testimony. I read from page 1757 of the record: "Did you try as a member of Congress to have indigo placed on the free list?" That was after I had introduced the two letters from the Farbwerke-Hoechst Company to this witness to do that, which he said he understood was not an instruction but a suggestion. His answer to the question was, "Yes, sir." "XQ. 249. And you succeeded? A. Yes, sir."

Now, that is the testimony.

MR. ANDERSON: All right, then I will put the question this way, since you have called my attention to the express language of the testimony:

RDQ. 1519. Why did you try to have indigo put on the free list in Congress at the time that you testified?

MR. KRESEL: I shall not object to that question.

A. Indigo was on the free list and always had been. It was considered putting it on a 10 per cent basis in the Underwood Bill, which would have raised the price that much, and there was objection by the textile people and myself on the floor of the House, and it was retained on the free list in that territory.

RDQ. 1520. Do you know whether synthetic indigo was in fact made in the United States at all at that time?

A. It was not.

RDQ. 1521. Is it a dye material which has been extensively used in the trade?

A. Most extensive of any individual dye, I presume.

RDQ. 1522. It has been testified here that the Textile Alliance was organized for the purpose of eradicating and preventing bribery and other improper practices in the textile and dye trade of the

United States. That was the effect, I think, of Mr. Patterson's testimony.

MR. KRESEL: Colonel, my recollection is that you declined to let me prove by Mr. Patterson what the purposes of his organization were. Notwithstanding that, I shall not object to your question. I simply want to correct your recollection that that was the testimony.

THE COURT: You gentlemen need not debate that now if there is no objection to the question.

MR. ANDERSON: Certainly.

RDQ. 1522 (continued). I will ask you if you were a member of or contributed to the Textile Alliance?

MR. KRESEL: I object to the question upon the ground that that is immaterial and irrelevant.

MR. ANDERSON: I will agree with counsel, as I urged upon the Court in the cross-examination, that all of this evidence is immaterial and irrelevant; but the character, standing, loyalty, integrity and every other quality that this witness possesses, was attacked on cross-examination, and the witness was, with counsel acting well within his legal rights, and therefore I am not complaining, restrained to a very limited reply as to those questions.

While I agree that as to the issues in this case none of this evidence on cross-examination is material and relevant, or can affect it, yet I think it is not only the right of the Government, but that which is due in fairness to the witness himself, to let the facts as fully as I know them be brought out, so that the testimony of the witness may be complete for the consideration of the Court.

THE COURT: It is re-direct on the question of bias or lack of it; interest or lack of it; credibility or lack of it; and for no other purpose?

MR. ANDERSON: That is right, your Honor; and no other purpose in the world.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: No, your Honor, I have nothing to add to my objection. Of course, if counsel will take this witness into new fields that were neither touched upon on the direct nor on the cross, I say now that it will unnecessarily lengthen any examination of him that I have to make. I am trying, and I had hoped that Colonel Anderson would help me, to finish with this witness as speedily as possible. Now, Colonel Anderson admits that the testimony is immaterial and irrelevant. I do not think it ought to go in. I have nothing further to add to my objection, your Honor.

MR. ANDERSON: I might say, in reply to counsel, that I think the reasons which I have stated impose upon me a duty to put this evidence in, although the whole subject, in my judgment, is immaterial. I am as anxious as counsel to shorten this examination; but I do not want to shorten it at the expense of justice, either to an individual or to the case.

THE COURT: You may put it in under the general rule if you like. You of course know more about the institution of which he was a member than I do. I do not know whether he has been discredited; I am not assuming that he has or has not; and do not know whether it would have a tendency to rehabilitate him or not. You may take the answer.

RDQ. 1523. Will you answer the question?

(RDQ. 1522 read as above recorded.)

A. Yes; my firm was——

MR. KRESEL: "Yes." Now, "yes," is an answer, isn't it?

RDQ. 1524. Have you any written evidence of any such contribution?

MR. KRESEL: I object to that upon the ground that it is immaterial and irrelevant.

THE COURT: Do you not think that is going a little far?

RDQ. 1524a. I will ask you how much you contributed to the Textile Alliance?

MR. KRESEL: I object to that as immaterial and irrelevant.

THE COURT: It seems to me that that does not have any tendency on that line.

MR. ANDERSON: If your Honor will permit me—I am certainly not going to argue against your Honor's views, excepting to this extent: This man is engaged in a large business. I say again, counsel acting within his rights attacked this witness and his credibility and his character and loyalty with a severity that I do not recall having before witnessed, and the evidence already in this case justifies in my judgment the statement that this is but a part of a long-continued controversy.

Those things, unless the full facts are brought out as far as one can on sudden notice of this kind, are liable to do irreparable injury to an individual when there is no redress, because these things done in a court of justice afford no redress.

Therefore, while I deem all of that matter as immaterial, and have so stated, those questions having been gone into, in my judgment, it is my duty to the full extent that I on short notice have a chance to do so to bring out every fact in order that the whole picture may be observed, because on cross-examination a witness is not allowed to talk, he is not allowed to explain, he is not allowed

to tell his motives, he is just pinned down to practically bare statements and half proof.

THE COURT: Colonel Anderson, do not understand me to indicate that I have any objection whatsoever to your asking any question that has a tendency, however remote, to do what you indicate it is your desire to do. But the thought that I tried to express was that at the moment I failed to see how his contributions to any commercial organization would have that tendency. However, rather than discuss it, let us put it of record under our general rule.

RDQ. 1525. How much did you contribute, do you know?

A. $5,000 on two occasions, I am quite sure. I offered for three years $5,000 each, and then when the war came, I do not believe the last contribution was called for.

MR. ANDERSON: I offer in evidence letter dated October 1, 1914, from A. M. Patterson, who has been on the witness stand here, to H. A. Metz, acknowledging receipt of $5,000 as a contribution to the Dyestuffs Committee of the American Association of Woolen and Worsted Manufacturers, to be identified and read as Plaintiff's Exhibit No. 439 (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 439." (*See Exhibits, Vol. II, page 843.*)

RDQ. 1526. Do you know whether the American Association of Woolen and Worsted Manufacturers had any connection with the Textile Alliance?

A. It was one of the associate members, a constituent member of the Textile Alliance; yes, sir. Mr. Patterson was president of that organization. Here

is a previous payment, the letter I have there, which I happened to see; my letter to him.

MR. ANDERSON: I offer in evidence copy of a letter dated May 15, 1914, addressed to Mr. Patterson by Mr. Metz, to be read and identified as Plaintiff's Exhibit No. 440, in which he says (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 440." (*See Exhibits, Vol. II, page 844.*)

A. (continuing). I have the other two here, if you want them.

MR. ANDERSON: I also offer in evidence copy of letter dated October 1, 1914, from Mr. Metz to Mr. Patterson enclosing a check of contribution for $5,000 for the improvement of conditions in the textile industry, to be identified and read as Plaintiff's Exhibit No. 441 (reading).

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 441." (*See Exhibits, Vol. II, page 845.*)

RDQ. 1527. You were asked as to the price which you charged the Government of the United States for salvarsan during the years 1916, 1917 and 1918, I think it was. Can you state the prices at which you actually sold salvarsan to the United States during those years or any of them?

MR. KRESEL: That was not my question, but I do not object to your asking him that.

A. Yes, sir; I can answer that.

RDQ. 1528. If you can give that information, please give it as far as you can?

A. In 1917, August 22nd, I sold the Medical Supply Depot 2,400 ampules of 0.6 at $1.00. That was American product.

RDQ. 1529. When you say 0.6, apparently, from

your former testimony, there were two sizes to this stuff?

A. Six-tenths of a gram and four-tenths of a gram are the usual sizes used.

RDQ. 1530. When you say 0.6, you mean the larger size, and when you say 0.4, you mean the smaller size?

A. Yes, I have the samples here.

By THE COURT:

Q. 1531. Are those the samples?

A. Yes, sir. I would be very glad to have you look at them.

THE COURT: Do you want those in?

MR. ANDERSON: I do not think so, sir.

By MR. ANDERSON:

RDQ. 1532. Go ahead, Mr. Metz, with your statement.

A. Do you want further figures, Colonel?

RDQ. 1533. You said first that you sold a number of ampules of what you call 0.6 at $1.00?

A. At $1.00.

RDQ. 1534. Now go ahead and state the date of the sales, the amount and the prices, as far as you can do it?

A. On August 22, 1917, 2,400 ampules of 0.6 at $1.00 to the Medical Supply Department of the Navy.

On December 6, 1917, 1,500 ampules to the U. S. Army, Medical Supply Depot, at eighty cents. That was 0.4.

On the same date, 1,000 ampules of 0.6 at $1.00.

On the same date, 1,200 ampules of one gram at $1.50.

On the same date, 200 ampules of 0.3 grams, at $2.00.

On the 27th of November, the same year, 1,500 ampules of 0.4 at 80 cents. On the same date, 1,000

ampules of 0.6 at one dollar, 1,200 ampules of one gram at $1.50, 300 ampules of two grams each, $3.00.

On December 7, 1917, 1,500 ampules of 0.4 at 80 cents, 1,000 6's at $1.00, 1,200 1's at $1.50, 300 2's at $3.00.

On November 5, 1917, to the Navy, 1,200 6's at $1.00, and to the Army on November 12th, 1,000 6's at $1.00.

The total that year was $30,100. That was 1917, after we started manufacturing.

In 1918, on February 18, 18,000 ampules to the Army at $1.00; on March 30, 100,006 6's at $1.00.

On March 30th, 25,000 ampules of one gram at $1.50, and 2,500 of two grams at $3.00. A total of $163,000 on those contracts.

Then I have the contracts for 1922 and 1923. There were none made in 1919, practically, except small shipments to the Public Health Service, but not to the Army and Navy. 1922 and 1923 I have got, but those were the average sales, and the price came down gradually from that time down to 1922, 30 cents for the 0.6, and in March to the Army and Navy I have here 18 cents, and 15 cents for the 0.3, 15 cents, neosalvarsan, 0.2, 14 cents, 0.3, 15 cents, 0.4, 16 cents, 0.6, 18 cents. The last quotation to the Army was 13 cents a few days ago, and I do not know who got the contract, with the United States Government Public Health Service.

MR. KRESEL: Would you mind my making a suggestion?

MR. ANDERSON: No.

MR. KRESEL: You asked him first the question with regard to the price, basing it on your recollection of what my question was. My question referred to the time before we entered into the war, and as to that period he testified he was charging everybody $4.50, including the Army.

MR. ANDERSON: I am going to ask him about that in a moment. I was referring now to his sales to the Army during the war.

MR. KRESEL: I simply did not want you to be misled about what the testimony was.

MR. ANDERSON: I understood the testimony to relate to the period of the war.

RDQ. 1535. On cross-examination yesterday counsel for the defendant asked you as to sales of salvarsan or neosalvarsan to the Government of the United States at a price of $4.50. Have you any knowledge of any such sale or record thereof?

A. Yes, sir, my accountant brought me a memorandum last night that we had one sale of 1,200 ampules to the Army some time in 1915, at $4.50, the price at that time.

RDQ. 1536. Mr. Metz, do you know where you got that salvarsan from?

A. That salvarsan came from Europe, after being held up——

MR. KRESEL: I ask that the——

RDQ. 1537. All right, it came from Europe, just stop there. Do you know what it cost you to get it over here?

A. Not specifically. I know the cost was greatly increased.

RDQ. 1538. Do you know approximately what it cost to get it here?

A. We had to pay Mr. Burr 10 per cent of the invoice——

MR. KRESEL: One minute, please. The question is what it cost.

THE COURT: That is susceptible of a definite answer.

RDQ. 1539. Have you any record from which you can find out what it did cost to get it here?

A. Not the entire charge, because there were sep-

arate charges, commission for getting it through the lines, and so forth. It was materially increased over the old price. I can not give you the exact figures at this date. I have not got them.

RDQ. 1540. Was that a part of the salvarsan that was imported during the period of 1915, as shown by the correspondence which I have read between you and the State Department?

A. Yes, sir; I had to send a man to Rotterdam to get it out.

RDQ. 1541. Did you offer your plant to the Government of the United States in 1917, and if the offer is in writing, let me have it?

A. I did, sir, and I have copies of the letters here which I sent to the Government.

MR. ANDERSON: We offer in evidence copies of three letters, one addressed to Dr. W. C. Stimpson.

MR. KRESEL: There is no objection on the ground that they are copies at all.

THE COURT: They will be admitted.

MR. ANDERSON: The first is addressed to Dr. W. C. Stimpson, Assistant Surgeon General, Public Health Service, Washington, D. C., signed H. A. Metz, dated April 26, 1917; another dated June 2, 1917, addressed to Honorable Newton D. Baker, Secretary of War, signed H. A. Metz; another dated June 2, 1917, to the Honorable Josephus Daniels, Secretary of the Navy, signed H. A. Metz, the three to be read as Plaintiff's Exhibits Nos. 442, 442-A and 442-B.

Received in evidence and marked respectively "Plaintiff's Exhibits Nos. 442, 442-A and 442-B." (*See Exhibits, Vol. II, pages 845, 846, 847.*)

MR. ANDERSON: In view of the evidence on this subject I am going to ask your Honor's indulgence while I read parts of these letters. The

first to the Surgeon General I will read now. (Reads Plaintiff's Exhibit No. 442.)

THE COURT: What is the date of that, Colonel?

MR. ANDERSON: April 26, 1917, just after the end of the war, sir.

(Mr. Anderson reads Plaintiff's Exhibit No. 442-A.)

MR. ANDERSON: The same letter is addressed to the Secretary of the Navy and need not be read. I offer in evidence a letter dated November 7, 1917, from the Department of Health of the City of New York, in re tests of specimens of salvarsan.

Received in evidence and marked "Plaintiff's Exhibit No. 443," and read by Mr. Anderson. (*See Exhibits, Vol. II, page 848.*)

RDQ. 1542. Mr. Metz, you have been asked about a certain agreement with Schamberg and the Dermatological Laboratories, dated June, 1916, which was put in evidence by the defendant. I would ask you whether at that time you had any manufacturing plant of your own in this country?

A. Yes, sir.

RDQ. 1543. For salvarsan?

A. Yes, sir.

RDQ. 1544. Were you making salvarsan yourself in June, 1916?

A. June, 1916?

RDQ. 1544a. Yes.

A. No, not for the market. We had not got ready for the market in June, 1916.

RDQ. 1545. At that time then you were not in fact manufacturing?

A. Not in 1916.

MR. KRESEL: Colonel, you have the date wrong.

THE WITNESS: Yes, the date is wrong.

MR. KRESEL: Will you pardon me. Don't try to do my job, too. The date of the agreement is December 5, 1916, not June; and then there is another agreement of June 8, 1919.

MR. ANDERSON: I am very much obliged to you. My notes were wrong, having been taken down hurriedly.

RDQ. 1546. To correct my statement, the first agreement is dated 1916. At that time were you actually manufacturing salvarsan commercially?

A. What date?

RDQ. 1547. December 5, 1916.

A. I had not begun to put it on the market. That was the agreement. I had been selling——

MR. KRESEL: One minute. You have answered the question.

RDQ. 1548. In the letter which I have just read, where you offered to sell to the War Department or the Surgeon General, you spoke of buying from Dr. Schamberg. Was that bought under that agreement?

A. I had been buying under that agreement before it was made for some time and that agreement finally settled the responsibility.

RDQ. 1549. There was another agreement put in here which was read to you by counsel for the defendant which was dated June, 1918. I will ask you whether you ever operated under the second agreement?

MR. KRESEL: I object to the question upon the ground that it calls for the witness's conclusion and for his interpretation of the agreement.

MR. ANDERSON: I agree that the word "operated" calls for a conclusion, but it does not call for an interpretation of the agreement.

MR. KRESEL: Of course, how can he state whether he operated under the agreement unless he interprets the agreement?

THE COURT: The question is withdrawn.

RDQ. 1550. The first paragraph of this agreement provides in effect that Dr. Schamberg and his associates, having knowledge and experience in the manufacture of this article, place their knowledge and experience at the service of H. A. Metz and his laboratory without unnecessary delay, in a sincere effort to bring his product up to the standards demanded by the Government without delay; in such a way, however, that the manufacture of this article by the Dermatological Research Laboratories will not be crippled or interfered with, and to accomplish this, Dr. Raiziss will without delay arrange his management of the manufacturing plants in such a way as to be in a position to give time and attention to the task of improving the product of the Metz Laboratory.

I will first ask you whether Dr. Schamberg or his associates ever went to your laboratories and did any work there after the execution of this agreement?

A. No, sir.

RDQ. 1551. I will next ask you whether Dr. Raiziss ever went to your laboratories or took any part in the management thereof after the execution of this agreement?

A. No, sir.

RDQ. 1552. I will ask you whether anything was done by Dr. Schamberg or his two associates named under that clause of the agreement at your laboratories?

A. No, sir; he was never asked.

RDQ. 1553. The second paragraph of this agreement contains two clauses. The first is that in the event that the Treaty of Peace terminated the right of the Dermatological Institute to manufacture under Federal Trade Commission license, you would agree, if you or any of your companies should have control of the German rights in any way after the Treaty of

Peace had been signed, to let them manufacture to a limited extent. Did you ever do anything under that agreement, under that clause?

A. No, sir. May I give a history of the whole agreement? Is it proper?

MR. ANDERSON: I am perfectly willing, if my friend, counsel for the defendant, will not object.

MR. KRESEL: Are you through questioning him specifically about the agreement?

MR. ANDERSON: I am now and he said he would like to give the history of it if you do not object. I don't know what he is going to say.

MR. KRESEL: I don't either.

MR. ANDERSON: Will you take the risk if I do?

MR. KRESEL: You are asking me to engage in a lottery?

MR. ANDERSON: Well, yes.

MR. KRESEL: Well, Colonel, I do not want to keep out what he wants to say, but I will say this to you: That that may make it necessary for me to call Dr. Schamberg and Dr. Raiziss and somebody else to contradict him, and I am trying to avoid that. That is the only reason that I will not consent.

THE WITNESS: May I withdraw the request?

MR. ANDERSON: Under the objection of counsel, of course, it would not be competent for the witness to state what took place prior to the making of the agreement, and therefore I will not try to get it in because I think we would be stopped almost at once, going outside of the terms of a written agreement.

MR. KRESEL: Colonel, you are learning, I will say that.

MR. ANDERSON: No, I think I learned that some years ago.

THE COURT: It is past three o'clock, and if there is going to be a discussion on immaterial matters, we will take an adjournment. If not, we can go ahead and try to finish with this witness.

MR. ANDERSON: It will take me another hour with this witness.

THE COURT: Do you want to go ahead for another hour?

MR. ANDERSON: I would prefer not. We are going to be in this case three weeks more, judging from the way we are going. I can not stand it physically. I would like to do it.

THE COURT: If there is any danger of that, I am going to ask counsel to lengthen the Court day from five hours to seven. We will begin earlier or stay later.

MR. ANDERSON: All I can say is that I hope to rest the Government's case tomorrow. I am prepared to rest tomorrow, and I think I can.

THE COURT: I do not want to ask you in weather like this to make it longer, if you can possibly avoid it.

MR. KRESEL: Before your Honor takes an adjournment, you will recall that before recess Mr. Metz handed me some documents, with the idea of my being able to determine whether I required the production of his books or whether these will be satisfactory.

These documents do not include any information with regard to novocain, which was the only product that I was questioning him about. These are solely documents relating to salvarsan. Therefore, they certainly do not answer the purpose.

THE COURT: And they are now returned to the witness?

MR. KRESEL: And are now returned to the witness.

MR. ANDERSON: I will take it up with the witness after adjournment, if your Honor please, and if it is possible to get any record such as counsel have called for here tomorrow morning, I will try to get it done.

THE COURT: We will take an adjournment until 8.30 tomorrow morning.

(Whereupon, at 3.10 o'clock, Standard Time, an adjournment was taken until Wednesday, June 27th, 1923, at 8.30 o'clock A. M., Standard Time.)

SIXTEENTH DAY.

Wilmington, Delaware,
June 27th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

HERMAN A. METZ, resumed the stand.

RE-DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

RDQ. 1554. Yesterday, at the time of adjournment, I was asking you what if anything was done under the so-called Schamberg agreement of June 8th, 1918. The third paragraph of the agreement is to the effect that in the event the Treaty of Peace does not nullify the license of the Dermatological Research Laboratories to manufacture arsphenamine after the

war, in the event that Mr. Metz is not in a position to carry out the guarantee to The Laboratories of their right to manufacture, that you would pay to The Laboratories a royalty on the manufacture of salvarsan under the license from the Federal Trade Commission for the duration of the war. Did you ever pay any royalties under that agreement?

A. No, sir.

RDQ. 1555. Then according to your testimony, nothing was ever done under that agreement?

A. Nothing, sir.

RDQ. 1556. Why not, Mr. Metz?

A. Didn't need their assistance; didn't demand it; didn't desire it and didn't use it.

RDQ. 1557. Under the agreement of December 5th, 1916, you were asked by counsel on cross-examination as to the provision in the agreement to the effect that you would not prosecute the Dermatological Institute for having manufactured, under the patents, salvarsan and neosalvarsan. You never did prosecute them, did you?

A. No, sir; I agreed not to.

RDQ. 1558. Why did you agree not to prosecute them?

A. I was willing to sacrifice—

MR. KRESEL: One minute, please. I object to that.

MR. ANDERSON: I think it is perfectly legitimate to ask him why he did not prosecute them.

MR. KRESEL: No, I do not agree with you. There is a written agreement between the parties that speaks for itself.

MR. ANDERSON: But I think he has a right to say why he did not prosecute.

THE COURT: I am not sure that I have the facts leading up to this question entirely clear in

my mind. You are referring now to the agreement of June, 1918?

MR. ANDERSON: No, sir; the agreement of 1916. I will put another question, which will probably make it clear.

RDQ. 1559. Counsel asked you something about your authority to sue in the prosecution of any alleged infringements of the rights of the then German owners of these patents, and I think he asked for the production of a power of attorney, or your authority.

MR. KRESEL: I did not ask him that, Colonel. He did say that he had some power of attorney, and if this is it and you want it put in, let me read it. I do not know that I will have any objection.

MR. ANDERSON: All right.

MR. KRESEL: Do you want to offer that?

MR. ANDERSON: Yes, I will offer it.

MR. KRESEL: Except as to materiality and relevancy, your Honor, we have no further objection.

MR. ANDERSON: I offer in evidence an original power of attorney dated the 16th day of December, 1911, running from the German house which has been shown in evidence to be the owner of these patents, to the witness, the contents of which speak for themselves; to be read as Plaintiff's Exhibit No. 444; and would ask leave to withdraw this paper and substitute a copy if desired.

MR. KRESEL: There is no objection to that.

THE COURT: Admitted subject to the general and specific objections of the defendant.

Received in evidence and marked "Plaintiff's Exhibit No. 444." (*See Exhibits, Vol. II, page 849.*)

THE COURT: Now, was the other question withdrawn, or will you restate it?

MR. ANDERSON: I will bring it up again.

RDQ. 1560. Now, you did not in fact sue the Der-

matological Institute for infringement, as the representative of the German house, did you?

A. No, sir.

RDQ. 1561. They were manufacturing in 1916?

A. Yes, sir.

RDQ. 1562. May I ask why you did not sue to enforce the rights of the German house?

MR. KRESEL: To that, your Honor, we object upon the ground that it is immaterial and irrelevant.

THE COURT: I wonder if I may ask two or three questions which will help me on that; but I hope these questions can be answered without a discussion.

MR. ANDERSON: Yes, sir; I will do that.

THE COURT: Because it seems to me that that is immaterial. It seems to me that many other facts are necessarily immaterial and unavoidably immaterial, and I mention these facts now so that if, perchance, my views happen to be more or less correct, we may eliminate them and in so doing save time on such matters as are clearly immaterial.

If I understand the testimony of yesterday and its value—and understand me, Colonel Anderson, I am not at any time during this trial unless I make it clear beyond all question definitely ruling on any issues of this case; for instance, on the power of the President to do what was done —I am not passing on that. I have read the Act once. I have not attempted to make any study of the Act. That is a matter lying at the foundation of the suit and I am not going to try and determine that until the whole case is in. But as I see it at the minute, it seems to me that the testimony of yesterday clearly presents these thoughts: First, you deny the contention of the

defendant that the terms and conditions of the acquisition of the patents and trade-marks by The Chemical Foundation were such as contended by the defendant; second, if I understand your testimony—and I am asking this to get your help—you do not deny that if those terms and conditions were as contended for by the defendant, that the price paid by The Chemical Foundation for the property it acquired was at all inadequate.

If I am right in those two statements, I take it that the only questions that are open here really are, the ascertainment of the terms and conditions under which the patent rights, trademark rights and other rights acquired by The Chemical Foundation were so acquired by it, and if they were in fact and in law acquired under the terms and conditions contended for by the defendant, then the only question remaining is the power of the Executive Department to make such sale under those terms and conditions.

I take it you are not suggesting that the Judicial Department has power to review the acts, the discretion or wisdom of the acts, of the Executive Department, if acts there were, with respect to the dye industry, particularly in view of the American situation pertaining thereto disclosed and demonstrated by the documentary evidence introduced yesterday afternoon. Do I make myself at all clear, Colonel?

Mr. Anderson: I think you do. But I think your Honor has misunderstood my position, which was not unnatural in this confusion. I am going now to just answer it and not going to argue it at all.

The Court: Yes, if you will.

Mr. Anderson: In the first place, your Honor is right in your first impression. I do differ funda-

mentally from counsel as to the terms and conditions which surrounded this sale as disclosed by the record and as to the rights transferred thereby. I think we differ on every point in that respect.

I object most earnestly and shall at all times most earnestly, unless there is a very material change in anything I understand in this case, insist that, if every condition surrounding this sale which they insisted upon were true, that the price paid was wholly, utterly and shockingly inadequate.

THE COURT: Will you not point out to me now the testimony on which you are going to base that? I do not mean to argue.

MR. ANDERSON: I am going to base it chiefly on the actual earnings of the property at the time of the sale. But I will go further. I do not want to argue the matter now. There is a great deal in the record that has not been brought to your Honor's attention specifically.

I will go further in that connection and say, as I have indicated in a number of instances, that while the Government has introduced evidence of the earning power of this property at the time of the transfer, which in our judgment is conclusive on the question of inadequacy, aside from the actual admissions on the record by the parties themselves of the arbitrary character of the arrangement as to price, yet the Government was under no legal obligation to do that.

MR. KRESEL: To do what?

MR. ANDERSON: To introduce any evidence of value on its prima facie case in view of the fact that under principles of law so familiar that they are elementary, once it is shown that property which has come into the hands of the trustee has

been disposed of, the burden shifts upon the trustee.

THE COURT: Do you mean to the purchaser?

MR. ANDERSON: The burden is shifted to the trustee, in this case to the purchaser, and the purchaser takes notice of the power of the trustee and the duties of the trustee.

In other words, I am not going to argue, but am merely trying to state my position. If I were to be trustee for A, with power of sale, and A and B bought from me trust property, in the absence of any provisions in the trust relieving me from any responsibility—and there is none here—he would take subject to my powers of sale and with knowledge of my trust position and with the responsibilities attached to that position. He can get no higher position in that connection than a trustee himself takes under all the burdens of a trustee, and becomes a constructive trustee himself if there is any defect in the sale. That, of course, is elementary law.

In the third place, while I have introduced evidence here of various theories because I can not tell what view your Honor or any other Court will take, it is my contention that the question of value in this case is utterly and absolutely immaterial; because it is so well settled by the decisions of the Supreme Court of the United States and the English courts as to require no discussion, that when a man is both seller and buyer, the question of consideration does not enter. He might have paid more than it is worth and the sale is invalid. If that principle of law is adopted in this case, then the question of consideration becomes utterly without value.

Now, I outlined those positions to you, so that your Honor might get a reply to your question

as full and as frank as I could make it at this time in connection with these questions of value; and in the fourth place, that if our position is correct in any of those respects, then the sale constitutes a confiscation which no one in the Government had the power to make.

THE COURT: Outside of Congress.

MR. ANDERSON: Outside of Congress. I mean in the Executive Department.

THE COURT: The question is whether the Congress did exercise the power and authorize the Executive Department to execute that power.

MR. ANDERSON: Yes. And of course, I would take the position there that Congress could not confer a power upon the Executive Department.

THE COURT: You need not debate that.

MR. ANDERSON: No, sir, of course not.

Then I would say further in connection with the question of confiscation of property that all of the conditions of sale enter into that, and that becomes a question of a very careful analysis of the record. Therefore, this evidence that I am now offering goes really to the position taken by the defendant as to certain conditions surrounding this sale, a point which I assume they will argue, that the value of this property at that time was depleted. It also goes to the fact of the very indefinite and intangible thing which we call an attack upon the credibility of a witness. This particular question I took to be directed more to that than anything else, on cross-examination, and I am only going to ask one or two questions.

I am not very clear, I am afraid, this morning, because sometimes you think clearly and sometimes you do not, and I am afraid I am not this morning; but I have tried to make my answers as clear to your Honor as I could, and as brief. I

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do not mean that those answers are in any sense complete on the record.

THE COURT: It seemed to me that it was necessary for me to make those inquiries, particularly in view of the testimony of yesterday, because I had understood certain answers with respect to values if the conditions existed, which seemed to me antagonistic to any other conclusion. I just wanted to get your views. Do you want to be heard at all, Mr. Kresel?

MR. KRESEL: No, your Honor, I do not think so.

THE COURT: Then I shall take the answer under the general rule.

(RDQ. 1562 repeated as above recorded.)

A. I was anxious to keep the public supplied with a satisfactory product, and was willing to waive all my rights and interests for that purpose, and sacrifice them if necessary.

RDQ. 1563. You were asked on cross-examination if you did not write to or obtain from various textile interests and dye manufacturers samples of the dyes which they used some time, I think, in 1916, possibly during the war; I do not remember the date.

A. 1913.

RDQ. 1563. (Continued) 1913; and I think you said that you did—

MR. KRESEL: Pardon me a minute. I did not give that question. May I have it repeated?

(RDQ. 1563 repeated as above recorded.)

MR. KRESEL: Colonel, I do not recall any such question.

MR. ANDERSON: I have a note of that here.

THE COURT: I do not recall that inquiry, Colonel Anderson.

MR. KRESEL: I do not even know what it is that

you are referring to or what the witness has in mind.

MR. ANDERSON: I have a note here that the question was asked.

MR. KRESEL: I will not object to your bringing it out; but I am simply calling to your attention that there was no such question that I put to the witness, or any answer on that line at all.

MR. ANDERSON: May I have the question answered? I have a note here that such a question was asked. May I have the question answered with the understanding that if there was no evidence brought out on cross-examination on that subject, the evidence will be disregarded so far as we are concerned?

THE COURT: I do not know whether I can do that, Colonel Anderson, because you may open up a field—

MR. ANDERSON: For re-direct?

THE COURT: Yes.

MR. ANDERSON: Then for the present I withdraw the question because I do not want to go into something that has not been gone into, on assurance of counsel that he does not recall the question. I may have misunderstood the witness.

RDQ. 1564. Mr. Metz, you were asked on cross-examination something about getting a transfer for salvarsan patents, neosalvarsan, and so forth, and you were asked a great many questions about the exclusive right which you claimed to use these patents. Did you ever get any transfer of these patents?

MR. KRESEL: One minute, please. Of course, that is asking for a conclusion. Do you mean whether he got a writing?

RDQ. 1565. I will ask you if you ever obtained any written assignment of these patents from the German house?

MR. KRESEL: In writing.

A. An assignment, no, sir.

RDQ. 1566. You testified on cross-examination that you claimed an exclusive right to manufacture under these patents based on some agreement of 1916?

A. Yes, sir.

RDQ. 1566-a. And that that was a verbal agreement so far as I recall?

MR. KRESEL: One minute, please. On the contrary, the witness testified that it was in writing.

MR. ANDERSON: But he said he did not have it.

MR. KRESEL: He testified that it was in writing.

THE COURT: Your own witness, Colonel Anderson, said your question suggested the answer.

MR. ANDERSON: I will withdraw it on that ground, your Honor.

RDQ. 1567. Have you any agreement of 1916 with your German house in regard to these patents in writing?

MR. KRESEL: He did not give the date, you will recall.

MR. ANDERSON: I beg pardon; the record clearly shows that he gave that.

MR. KRESEL: No, you are in error. He did not give the date. If you like, I will refer you to the record.

MR. ANDERSON: All right.

RDQ. 1568. Did you have any agreement with the German house made in 1916 with respect to these patents?

A. My brother made an agreement—

MR. KRESEL: One minute, please; I object to that. I think the witness should answer either yes or no.

THE COURT: You may answer yes, or no, and then Colonel Anderson may bring out the other

facts from you by specific questions to which Mr. Kresel will have an opportunity to object. Can you answer that yes or no?

(RDQ. 1568 repeated as above recorded.)

A. Yes, an agreement was made.

RDQ. 1569. Have you any written evidence of that agreement?

A. Nothing in writing. I did not think it would be permitted to get out of Germany at that time.

MR. KRESEL: I object.

THE COURT: I am not sure from what he has said that he can answer that yes or no.

THE WITNESS: They would have taken it. It could not pass the English lines, I thought; they would have taken everything away from my brother.

MR. KRESEL: I object to that.

MR. ANDERSON: I consent to strike out the rest. The statement that it was not allowed to get out of Germany at that time will remain?

THE COURT: Yes. The remainder is volunteered and will be stricken out.

RDQ. 1570. Have you ever had in your possession in America any such agreement in writing?

A. No, I have never had the agreement. I had my brother's statement to me, that is all, of the contents of the agreement.

RDQ. 1571. Was the agreement so far as you were concerned for any period?

A. No, sir.

MR. KRESEL: Colonel, if you will remember, the witness testified here yesterday that it was for the life of the patent. Is it possible he now wants to say that that was not correct?

MR. ANDERSON: What is the meaning of the life of the patent?

MR. KRESEL: You know what the life of a patent is—

MR. ANDERSON: Certainly I do.

MR. KRESEL: And he knows what the life of a patent is.

MR. ANDERSON: Suppose it was for an indeterminate period and he construed it to be the life of the patent. That is the construction of the agreement. I am arguing with counsel instead of addressing your Honor.

THE COURT: That is all right, so long as it does not consume too much time.

MR. KRESEL: That is all. I am through, your Honor.

THE COURT: Of course, you will recall his answer of yesterday.

MR. ANDERSON: Yes, sir. Then I will ask him this question:

RDQ. 1572. It appears that you testified yesterday that the agreement was for the life of the patent. Were there any specific terms of agreement on the subject of period and, if so, state what they were?

MR. KRESEL: It now appears that this agreement is in writing. I object to this witness undertaking to state the contents of that agreement.

MR. ANDERSON: He has already stated it on cross-examination, I think.

MR. KRESEL: I beg your pardon, he did not state it on cross-examination.

THE COURT: Have you not two difficulties now, Colonel Anderson, the one presented by Mr. Kresel and also the further one that in his answer a moment ago, which you said I think need not to be taken down, that his brother had stated to him the contents of this document?

MR. ANDERSON: Yes.

MR. KRESEL: Which is hearsay.

THE COURT: Which is not only the statement of the contents of a written document, but also hearsay with respect to such a conversation.

MR. ANDERSON: I think your Honor's objection is well taken for the whole evidence on the subject. I think I will leave the matter right there. I did not mean to say your Honor's objection, I meant your Honor's suggestion.

I now offer in evidence a letter from the Treasury Department, Bureau of Public Health, dated March 14, 1919, addressed to Mr. Metz, signed by Rupert Blue, Surgeon General, which is offered in connection with Defendant's Exhibit, No. 23, on yesterday and ask that the same be read as Plaintiff's Exhibit 443, the letter being as follows:

THE COURT: Admitted under the same conditions as the preceding documents.

Received in evidence and marked "Plaintiff's Exhibit, No. 445." (*See Exhibits, Vol. II, page 851.*)

RDQ. 1573. On cross-examination you were asked as to your visit to Germany in the year 1922 and your alleged meeting with certain gentlemen, Mr. Oppenheim and others who were then on their way to America. Will you state just what took place?

MR. KRESEL: Will you ask him to fix the date, please, as near as possible?

RDQ. 1573. (Continuing) Will you fix the date as near as you can that you met these gentlemen and state what took place, how you happened to meet them and what happened?

A. As near as I can fix the date, it was early in June. I was in Berlin and received a telegram to see Assessor Oppenheim who was leaving that night for London to come to America. I saw him for about fifteen minutes at his residence.

MR. KRESEL: May I interrupt a minute to ask whether the witness has the telegram?

RDQ. 1574. Have you that telegram?

A. I haven't it with me. It is a routine thing.

MR. KRESEL: If he hasn't it, will he state from whom it was?

A. (Continuing) It was from the Hoechst people, the Farbwerke people. I saw Dr. Oppenheim for a few moments, about ten or fifteen minutes at his residence. He was packing his bag to leave on a train for London. He was going over, he told me, in answer to a telegram that he had received from Washington attorneys that suits for the recovery of the license fees had to be claimed before July 1st, I think it was, or whatever date the law specified; and he was going over in connection with those suits. That is the only one I saw, the only gentleman I saw connected with that expedition until he came back from America some time in August—yes, August, I think it was. I didn't know the others were going.

RDQ. 1575. Was there anything said in connection with any suit against the Chemical Foundation for the recovery of these patents?

A. Not a word, sir.

RDQ. 1576. Had you at that time ever heard of any suggestion of bringing a suit for the recovery of the patents?

A. I can not recall having ever heard a suggestion with regard to that.

RDQ. 1577. How long were you abroad, Mr. Metz?

A. I was abroad, I believe, until September 6th. I sailed from Cherbourg. I was in Paris for quite a while with my family and I was in Switzerland. I sailed on September 6th and got home about the 15th of September, 1922.

RDQ. 1578. If you recall, state when you first

heard of any suggestion of proceedings by the Government to recover the patents here in controversy?

A. I received a telegram—

MR. KRESEL: I object to that. The question is when he heard it, just simply the date.

A. (Continuing) I can not recall. It was after it was begun, after the President's demand for the return of the patents.

RDQ. 1579. Did you ever suggest to any official of the Government of the United States that this suit be brought?

MR. KRESEL: I object to that. I object to it as an indefinite question. He either had conversations with somebody about it or did not. If he did, then of course, you can ask what the conversation was.

RDQ. 1580. Did you ever have any conversation with any officer of the Government of the United States in regard to bringing this suit before it was instituted; and if so, with whom and where?

A. I can not recall a single conversation. I don't think I had any with any official of the United States or anyone else before that time on this point, on the point of asking for the patents or the suit. I don't recall anything of the kind.

RDQ. 1581. I think you testified on cross-examination that your trade-marks salvarsan, neosalvarsan and novocain had been seized by the Alien Property Custodian or demanded by the Alien Property Custodian?

A. Yes, sir.

RDQ. 1582. Was any such demand ever made upon you personally?

A. I think there was; I am quite sure; in the list of trade-marks and so forth, it came.

RDQ. 1583. Have you ever demanded the return of those trade-marks?

A. Yes, sir.

RDQ. 1584. Have they ever been returned to you?

A. No, sir. I would like to qualify that. Demand was made on the Chemical Foundation by my attorney when he knew they had claimed them, as against the Alien Property Custodian, I meant to say. I didn't know they had them. Didn't consider it.

RDQ. 1585. Mr. Metz, you testified on cross-examination that you did not pay any money to the German Company, the then owner of these patents, for the right which you claim or allege to have obtained in 1916 to use the same or to manufacture thereunder. I am going to ask you this question which I will ask you not to answer until counsel can be heard. From your familiarity with this business, as indicated in the evidence which you have already given, and bearing in mind the evidence here disclosed as to conditions with respect to the exportation of salvarsan, neosalvarsan and novocain from Germany in 1916, would you regard the continued manufacture and sale of these articles under these patents in the United States, or in the exportation from the United States, when manufactured in the United States, of value to the owners of the patents?

MR. KRESEL: We object to that question, if your Honor please, object to it as to form if it is a question put to an expert, as I must assume it is.

MR. ANDERSON: It is a fair assumption.

MR. KRESEL: And upon the ground that it is not founded upon any facts in the case or either upon an assumption of facts. I recognize that you may assume a state of facts when you put a question to an expert, as I did upon my cross-examination of this witness. The question is based upon conditions in 1916, whereas the only materiality, if it has any materiality at all, must be directed to conditions in 1919, at the time when this sale was

made. It calls for the witness's conclusion as to what he believed was in the minds of Germans as to whether a certain situation was of value to them or was not of value to them. It does not call for this witness's estimate of the value of any particular thing such as the trade-mark or the patent. It is asking him to construe the frame of mind of the Germans as to whether they in 1916 believed that a continuance of manufacture here was of value to them. I do not think that that is the subject for expert testimony.

MR. ANDERSON: I beg your pardon, I thought you were through.

MR. KRESEL: I was going to add, if you will permit me, the ground urged, and further upon the ground that the testimony is for that reason immaterial and irrelevant, we object to it.

THE COURT: Before I hear you, Colonel Anderson, I will state my difficulty so you may reply to it. I am having this difficulty with respect to the agreement of December 5th, 1916, and the agreement of June, 1918, and the written document which did not come out of Germany—a confusion of the terms of those several agreements.

MR. KRESEL: Will your Honor permit me to give you in very few words the contents of those agreements?

THE COURT: I wish you would.

MR. KRESEL: First, the agreement of December 5th, 1916, was an agreement between the Dermatological Laboratories and Mr. Metz, the Farbwerke-Hoechst Company. By that agreement the Laboratories agreed to dismantle their plant in which they had been manufacturing a product.

THE COURT: I have that.

MR. KRESEL: You have that.

THE COURT: Yes. You need not state any

more about that. I have the terms of that agreement.

MR. KRESEL: Very well. The terms of the June, 1918 agreement between the persons who were conducting the Dermatological Laboratories, Drs. Schamberg, Raiziss, etc., and Mr. Metz—

THE COURT: I have that.

MR. KRESEL: Your Honor does not need anything further on that?

THE COURT: No. Colonel Anderson, it seems to me that this question is immaterial because the matter with which we are concerned and the issue to which it would be pertinent if relevant would be that of value at the time of the sale, would it not?

MR. ANDERSON: Yes, sir.

THE COURT: And that only. Then that value is ascertained by the conditions existing at the time of sale. I do not see the logical sequence in that connection between the business wisdom of the Germans permitting the manufacture here when they could not export from Germany and import into the United States, and the sale value of the salvarsan, neosolvarsan and novocain patents in 1919. If you think it is relevant I will take the answer without further discussion, or I will hear you.

MR. ANDERSON: I think that probably I should state to your Honor why I have asked the question, that your Honor may see why it is relevant. I have already indicated, and we shall contend here, that assuming the agreement of 1916 can be considered in this case—and it is all subject to objection from one side or the other—then it follows that the question on cross-examination was directed to one of two things, either to show that the right was of no value to manufacture in the United States or for the purpose of showing that the witness had

nothing that he paid for, paid any money for under this agreement, and that therefore the limitation alleged to have been created upon the patent use by this agreement gave to and would give to the owner of the patent or its successor no right to revenue which would come in.

THE COURT: Your question was what?

MR. ANDERSON: No right to revenue.

THE COURT: No, but your question?

MR. ANDERSON: My question was assuming that they could not export to the United States—I will put it that way if you wish—which the evidence here shows, assuming that there was a business in the United States which the evidence shows, assuming that the person manufacturing in the United States could export to other countries, which necessarily follows, then the value of maintaining that business during the period of suspension to the German owner was enormous.

THE COURT: I understand your respective theories, and if you want to put it of record you may do so.

MR. ANDERSON: Of course, it will be a debateable question, but there are going to be lots of them here, and I want to get the record in such shape that we can argue the reasonableness of the position. In view of the objection I will reframe the question, because I would just as soon put it the other way.

RDQ. 1586. Assuming that in the year 1916, at which time you testified as to some right acquired to manufacture under the salvarsan and neosolvarsan patents, the exportation of this product from Germany to the United States was substantially cut off by blockade and the export thereof from Germany to other countries was substantially cut off, and assuming that there were then large sales of this article in

the United States and other countries and a large demand therefor, would you as a person familiar with this business, as you have indicated in your testimony, regard the continuance of the manufacture in the United States, the sale of this article in the United States, and the exportation thereof to other countries from the United States during the period of such suspension of exportation from Germany owing to the conditions described, as of value to the German owner of these patents or his successor.

THE COURT: The question I assume, is subject to all objections which you have heretofore made to this or indicated with respect to other questions?

MR. KRESEL: Yes, your Honor.

THE COURT: The answer will be taken subject to your general and specific objections.

A. Yes, sir.

RDQ. 1587. From your familiarity with the business could you make any reasonable estimate of what you would regard the value of such a continuation of the business as I have described to be to the owner of the patent during the period which I have described, resulting from these conditions?

MR. KRESEL: Please just say yes or no.

A. Yes or no to the question? What is the question?

RDQ. 1588. What do you say?

A. Perhaps I can not say yes or no to the question.

THE COURT: That is, can you make an estimate of value?

RDQ. 1589. Just say whether you can, whether you think you can estimate its value?

A. No, not definitely. It would be enormous.

MR. KRESEL: May I have the latter part stricken out, your Honor?

THE COURT: Yes.

RDQ. 1590. Would you regard it as of great value, nominal value, or small value, without stating any figures?

MR. KRESEL: Object to it upon the grounds already urged; further upon the ground that it is a subject it seems to me which can not be valued. No one can undertake to say what, if any, value there is to such an ephemeral and fleeting thing as a desire to continue operations.

MR. ANDERSON: Good-will? I think it was a pretty valuable property. The Supreme Court of the United States has held it was.

THE COURT: That involves too many questions for me to discuss.

MR. ANDERSON: Yes. I do not want to discuss it.

THE COURT: It seems to me that your answer would not be of much value, because it would be vague and indefinite.

MR. ANDERSON: I concede that it possibly would be argumentative and I think probably it is better to argue it from the record than otherwise. I will therefore waive any answer to the question.

RDQ. 1591. Early in this examination we introduced in evidence certified copies of your registration of trade-marks "salvarsan," "neosalvarsan," and "novocain." You recall those, do you not?

A. Yes, sir.

RDQ. 1592. It appears in the evidence that these trade-marks were originally assigned to your American corporation, Farbwerke-Hoechst Company; were they not?

A. Yes, sir.

RDQ. 1593. And the abstract which I have before me also shows that they were assigned to the H. A. Metz Laboratories?

A. Yes, by the Farbwerke-Hoechst Company.

MR. KRESEL: Are they both in evidence, Colonel?

MR. ANDERSON: All in evidence, yes. Apparently the one assignment from Farbwerke to—

MR. KRESEL: I did not recall it. That is the reason I asked.

MR. ANDERSON: I will put that in evidence. In order to complete the record I now offer in evidence certified copy of assignment recorded July 24, 1918, from the Farbwerke-Hoechst Company, a New York Corporation, to the H. A. Metz Laboratories, Incorporated, a New York corporation, to be identified and read as Plaintiff's Exhibit, No. 446.

MR. KRESEL: Same objection that we raised to the others.

THE COURT: Received under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 446." (*See Exhibits, Vol. II, page 851.*)

RDQ. 1594. Assuming, for the sake of this question that the law of the United States authorizes the registration of trade-marks at the Custom House, and when so registered prevents the importation of articles under such trademark names or trade names into the United States without the consent of the owner of the trade-mark, would that fact, in your opinion increase the value of American trade-marks, including the marks "Salvarsan," "Neosalvarsan," and "Novocain," so registered?

MR. KRESEL: We object to that upon the ground that unless it is for the purpose of having this witness change or modify his testimony as to the value of these trademarks, which he has already given, it is immaterial and irrelevant.

We further object upon the ground that what

the law of the land is is something that the Court will take judicial cognizance of, and that it is not proper to ask this witness as an expert upon values to base his opinion as to the value of a trademark merely upon the law as stated by counsel, assuming that counsel stated it correctly.

MR. ANDERSON: Unless I did state it correctly, in substance—I thought you were through, sir.

MR. KRESEL: I am not challenging the correctness of your statement. I am going to assume for the present that it is correct.

THE COURT: I do not follow the second point of your objection, Mr. Kresel, because it seems to me that this witness would have been entitled to place a value upon this trademark on various assumptions, although one of those assumptions would be a condition of fact that would be regulated by law, and this question is assuming that certain conditions existed which would be brought about by the operation of law.

But it seems to me, Colonel Anderson, that there is merit in the first point, particularly if carried a step further, and that is: This goes to values which you have gone into quite fully in your examination in chief, and that you are now covering not strictly in re-direct, but rather anew, although in slightly different manner, the same question into which you went in detail. However, if you want it, you may put it in the record.

MR. ANDERSON: I think your Honor's second suggestion is probably a good objection to this question. The value was gone into on the original examination, and to assume additional elements of value might reopen it and possibly make it subject to that objection. So I will leave that without an answer.

THE COURT: Question withdrawn.

MR. ANDERSON: The question will be withdrawn and I will ask this question:

RDQ. 1595. Have you ever undertaken to register your trademarks Salvarsan, Neosalvarsan, and Novocain, or either of them, in the Custom House of the United States?

A. Yes, sir.

RDQ. 1596. Was such registration allowed?

A. No, sir.

RDQ. 1597. Can you state, and if you have it in writing, produce the writing, why you were informed that you could not register the trademark?

MR. KRESEL: I object to that upon the ground that it is immaterial and irrelevant, that this Court can not undertake to pass upon the propriety of the refusal to register these trademarks or no. It is not a matter in issue here.

MR. ANDERSON: Your Honor please, I will state what I want to prove by this witness. I wish to show by the witness, in connection with the evidence taken on cross-examination, that the witness made an effort to register his trademarks which he claimed to own as an American citizen and that the Chemical Foundation, under the claim of ownership of those trademarks by virtue of the assignment here in question, objected at the Custom House to the registration thereof on the ground that they were the owners and upon that state of facts he was advised by the Collector of Customs that he could not register the trademarks. I think that is material as bearing upon this situation.

THE COURT: I will not pass upon the materiality, but will let you take your answer subject to the objection.

RDQ. 1597. (continuing) Just go ahead and state the facts.

A. The facts as stated are not quite correct, Colonel Anderson.

RDQ. 1598. I stated them the best I could.

A. I do not know that the Chemical Foundation objected, but because of the Patent Office record—

RDQ. 1599. You just state the facts as they were.

MR. KRESEL: Will you just pardon me a minute. Before the witness undertakes to state the facts, I ask you, Colonel, if there are any writings in the matter. If so, the writings speak for themselves, if the Court rules that the matter is material.

THE COURT: I am not going to rule that it is material.

MR. KRESEL: I withdraw that, your Honor. If the Court rules that the evidence should be taken, then I think the best evidence should be taken.

RDQ. 1600. If you have any writings, let me have them, please.

A. The trademark, the certified copy filed with the Custom House, is the one that would give the information, Colonel. You have those, I think. The registration was refused because of the records showing—

RDQ. 1601. Have you got any writings?

A. You have it here, the certified copies—I don't know the legal phrase—the record of the ownership in the Patent Office. It was on the strength of that that I was refused, because that showed the Chemical Foundation claimed ownership.

MR. KRESEL: I object to that.

THE COURT: Don't say what that shows.

A. (continuing) You have the record here, gentlemen. I haven't got the record.

RDQ. 1602. Did you receive any communication from the Custom House on that subject, and if so, what

was the communication? If you have it there, let me have it?

A. I don't know as I have it. You have got it. I think I gave it to you gentlemen. The substance was—

THE COURT: No.

A. (continuing) I have to find it then, if you please.

RDQ. 1603. You have not any writing with you on this subject?

A. Not here. There is such a paper in Washington, I know. I have seen it.

MR. KRESEL: Would you mind asking him the date of that communication?

RDQ. 1604. Have you knowledge of the date of the communication?

A. The communication will show. I haven't it offhand, but the papers can be submitted and found over here.

RDQ. 1605. Will you see if you can find it a little later and if so I will then introduce it in evidence in connection with this question. If it requires explanation, I will ask leave to ask the question.

A. I have the further correspondence on the subject though, Colonel.

RDQ. 1606. Let me see the further correspondence?

A. That the Custom House agreed—

THE COURT: Don't say what the papers showed.

RDQ. 1607. Is this the paper to which you refer?

A. Yes. This is the letter from the Treasury Department referring to the trademark.

RDQ. 1608. You have not the letter that I want. I will have to get a certified copy from the Patent Office at Washington. You spoke yesterday of "Nuisance value" which is a term that has been used here

a great many times. I would like to have you define what you mean by "nuisance value" of a patent?

MR. KRESEL: May I suggest, Colonel, that you ask him that question with reference to these patents, not generally.

MR. ANDERSON: I will ask him first for the definition.

RDQ 1609. You spoke yesterday of the nuisance value of patents covering dyestuffs and things of that kind. I will ask you what you meant; what is your definition of the term "nuisance value"? What do you mean by it?

MR. KRESEL: Colonel, I must object to that in the form that you put it. He did not testify yesterday generally as to the nuisance value of dye patents. He testified specifically yesterday that he had testified before a Committee of Congress that these patents here in question had only a nuisance value. Now, I recognize your right to ask him about that, but I do object to your going into a general discussion with this man about the nuisance value of patents with which we have nothing to do.

THE COURT: What you want, I take it, Colonel Anderson, is what he meant by the term "nuisance value" used by him in his prior testimony.

MR. ANDERSON: That is all; and I will put the question as his Honor stated it.

THE WITNESS: How is the question?

RDQ. 1610. What did you mean by the term "nuisance value" as used in your prior testimony taken on cross-examination and before the Committees?

A. The value inherent in a patent that prevents others from doing business with a competing product of any kind, although the owner did not do anything himself with it. That would be a nuisance value.

RDQ. 1611 Has the Chemical Foundation ever asserted against you the claim of ownership of salvarsan or silver salvarsan; and if you have it in writing, please let me have it.

MR. KRESEL: Do you mean the patents or trademarks?

MR. ANDERSON: No, I mean the trademarks.

A. Yes, sir.

MR. ANDERSON: I offer in evidence letter dated July 16, 1921, signed by Harry D. Nims addressed to H. A. Metz Laboratories, Incorporated, to be marked as Plaintiff's Exhibit No. 447. You will admit, Mr. Kresel, that Mr. Nims represented the Chemical Foundation?

MR. KRESEL: I think that is correct. Yes, he did.

THE COURT: Admitted subject to the general objections of the defendant.

Received in evidence and marked "Plaintiff's Exhibit No. 447." (*See Exhibits, Vol. II, page 854.*)

MR. ANDERSON: The letter is as follows (reading).

MR. KRESEL: Was there any reply?

RDQ. 1612. Did you ever make any reply to that letter?

A. My attorneys took the matter up with the Patent Office.

MR. KRESEL: I ask that that be stricken out.

RDQ. 1613. Did you ever make any reply direct?

A Through my attorneys, undoubtedly.

MR. KRESEL: Has he a copy? Can he produce it?

A. (continuing) I think you have it there. My attorneys certainly made a reply.

RDQ. 1614. You have not the reply with you, have you?

A. No, sir. I have no reply with me. I haven't got it.

RDQ. 1615. Mr. Metz, you were asked yesterday by counsel for the defendant as to the amount of royalties paid on your sale of novocain under the Federal Trade Commission license?

A. Yes, sir.

RDQ. 1616. And I think that you made some explanation as to the royalties being less than five per cent. of the total sales?

A. Yes, sir.

RDQ. 1617. Have you in your possession one of the packages of novocain which you sold that represents the sample which you sold under those conditions?

A. Yes, sir; the novocain and the tablets made from novocain.

RDQ. 1618. In order to make your evidence clear, would you produce that?

A. Yes, sir (handing packages to counsel).

MR. ANDERSON: I offer in evidence two packages, one of novocain and the other of tablets, produced by the witness.

MR. KRESEL: I can not understand, your Honor, the purpose of such an exhibit. I can not understand what materiality and relevancy there can be to these issues.

THE COURT: How many exhibits have we now, Colonel Anderson? Four hundred and what?

MR. ANDERSON: 447.

THE COURT: I am wondering if the purpose that you have in mind is not this, that novocain as sold commercially or the product sold commercially as novocain was not 100 per cent novocain.

MR. ANDERSON: Quite so.

THE COURT: But that the commercial product contained other things besides novocain and that

this witness has testified that he paid royalties not on the product as sold but only on the percentage of that product which was novocain; isn't that it?

MR. ANDERSON: That is right. And he also said he testified that the large part of the expense or cost of the product sold was in the bottles and labels which were necessary; and I want to make his evidence perfectly clear.

THE COURT: All right; admitted.

MR. ANDERSON: I will merely identify this stuff and leave it on the record.

RDQ. 1619. Do you desire to in any way enlarge your testimony of yesterday on that subject to make it clear? And if so, state exactly how you came to make the returns of royalties on this novocain?

A. Yes, sir. On novocain as such we pay 5 per cent. That is the product under the license. Novocain tablets contain novocain plus other products, including superaniline, and other patented high priced products, and the cost of labor of making tablets and bottles is much greater than the novocain itself. We sell novocain to various manufacturers who make these specialties, tablets and solutions.

We therefore charge ourselves on a manufacturing account with the amount of novocain that goes into these tablets and pay royalty upon that novocain by arrangement with the Federal Trade Commission, and keep a separate account; and that was checked up by the representative of the Alien Property Custodian and the Commission, and I have those checked records here. They are not on our books. They are separate records for manufacturing purposes.

Might I add further on that, Colonel, in further elaboration?

RDQ. 1619. (continued) In response to the question, yes.

A. On account of the figures I gave. I had a telephone call to come down next morning with the figures, and I asked for them, and they gave me the totals instead of separating the specialties from the novocain. That was the cause of my statement as to those amounts. They are now separated.

RDQ. 1620. At an earlier stage I asked you a question in regard to your having obtained samples of the dyes used by other manufacturers, merchants or consumers in the United States. At that time counsel suggested that there was no testimony on the subject. I find at page 1754 of the record a letter introduced in evidence or read by counsel, addressed to you, which he states was from the Farbwerke Company in Germany, dated June 20, 1913. In that letter is a statement:

> "It is very interesting that you now receive the samples of competing factories on the part of dyers for examination. I can nevertheless imagine that an uncomfortable situation may sometimes arise for you because of it."

How did you come to procure those samples, and why?

A. The representative of the Textile Alliance, in their efforts to stamp out the abuses in the industry, had to have information as to the value of goods purchased by the various mills which came to them for advice. The samples from these mills were sent to me by their representatives for my opinion as to money value, on whether they were getting money value for the goods they paid for, and I made the tests and reported to them.

RDQ. 1621. Was the Textile Alliance the organization of which Mr. A. M. Patterson was President?

A. Yes, sir. And the reference to the uncomfortable position was that my competitors or some of my customers—

MR. KRESEL: I object to his interpreting the thoughts of the writer of the letter. He was not the writer.

THE COURT: No, he can not do that.

MR. ANDERSON: I think that is all I want to ask the witness.

RE-CROSS-EXAMINATION.

By MR. KRESEL:

RXQ. 1622. Mr. Metz, first I would like to straighten out with you the novocain figures as to which you have just testified. On your direct you gave, in answer to Colonel Anderson's questions, the amount of your sales of novocain for the years 1919, 1920, 1921 and 1922. Without repeating the exact figures that you gave as they now appear in the record, the total thereof was upwards of a million dollars?

A. Yes, sir.

RXQ. 1623. In addition to that you gave the amounts of royalties that you paid under your Federal Trade Commission licenses under those sales?

A. Yes, sir.

RXQ. 1624. I understand you to say that in point of fact the figures of your sales of novocain that you gave included other ingredients?

A. Yes, sir.

RXQ. 1625. Can you state the real amount of sales of novocain you made during those four years?

A. I have the five years—

RXQ. 1625. (continued) Five years?

A. From 1918 to 1922, inclusive.

RXQ. 1625. (Continued) Yes.

A. The actual amount of novocain sold as novocain and in the preparation was $477,961.98, on which the royalty was paid.

RXQ. 1626. Those were sales for a period of how many years?

A. 1918, 1919, 1920, 1921 and 1922—1922, up to and including July 1st, only.

RXQ. 1627. I noticed upon your re-direct examination you had available to you a lot of correspondence running way back to 1915, correspondence with officials of the Government and others. Have you your correspondence with Mr. Dieters that you have had with him this year?

A. I told you as I did not know if I had any copies. If I had I would be glad to bring them.

RXQ. 1628. I did not even ask you about copies only. Have you any correspondence with him, letters from him or copies of letters by you to him?

A. Yes, sir.

RXQ. 1629. Please produce them.

A. Colonel Anderson has them.

MR. ANDERSON: Here is the only one I have got. (Handing witness.)

THE WITNESS: I received a letter—

RXQ. 1630. No, please produce them, let me see them.

A. This is the correspondence and papers Colonel Anderson has came with them.

MR. ANDERSON: If your Honor please, I wish to call your attention to this fact, that I did not ask a single question in regard to this subject on re-direct, and I do not think that counsel has a right to reopen this subject for further cross-examination. I stated I was perfectly willing on any matter on which there was any doubt whether it was direct or re-direct to permit further cross-examination, but I did not consent and can not consent to reopening the cross-examination generally. Therefore I object to that question.

MR. KRESEL: I do not propose to reopen the cross-examination generally. Your Honor will recall that upon the cross-examination I asked this

witness for the correspondence and he said he would look it up. It seems to me that I have a right to ask him now the result of his search. I am not reopening the cross-examination.

MR. ANDERSON: I do not recall that, but if counsel makes that statement, of course he has a right to call for it.

MR. KRESEL: There is not any question about that, Colonel, that I asked the witness, and the witness will admit it.

THE COURT: I will take it any way, Colonel. There is now in the hands of Mr. Kresel a certain document produced by the witness, which of course Mr. Kresel can without further questioning mark for identification and stop there.

MR. ANDERSON: I only want to reserve the right to further examination.

MR. KRESEL: I shall not reopen the cross-examination. I am quite content to let it go as it is. There are three papers here and I will have marked the first one, for identification only for the present.

Marked for identification "Defendant's Exhibit I,"

MR. KRESEL: And the two annexed thereto as I-1 and I-2.

Marked for identification "Defendant's Exhibits I-1 and I-2."

THE COURT: Being the papers produced by the witness.

RXQ. 1631. Mr. Metz, you have produced one letter, a typewritten memorandum and a printed memorandum. Is that all of the correspondence that you ever had with Mr. Dieters?

A. That is all I had with me. There were other letters from him at various times which I have not got

and I do not think I kept. Those are all I had and when I looked at my papers I found them.

RXQ. 1632. Have you not now here in Court other letters from Mr. Dieters to you?

A. No, sir; with those papers came some copies of reports which I handed Colonel Anderson, which he mailed to me without—I did not even read them, affidavits and such that he has been talking about for two years.

MR. ANDERSON: I do not think I have those papers.

MR. KRESEL: I am not charging you with the possession of them yet.

MR. ANDERSON: Well, if I had them I would produce them.

RXQ. 1633. You say that you received from Deiters certain affidavits?

A. Yes, sir; copies of affidavits—claimed to be copies of affidavits.

RXQ. 1634. You mean not signed affidavits but copies?

A. I don't know, Mr. Kresel. They are here in Court. I did not even look at them. He had so much talk about affidavits that I never bothered with them after that.

RXQ. 1635. In addition to those affidavits as you call them, was there not other correspondence that you had with him?

A. I do not recall, Mr. Kresel.

RXQ. 1636. Have you not a single copy of any letter that you ever wrote to him?

A. Not with me, and if there is home, I will get it as I told you the other day.

RXQ. 1637. I have been questioning you on this subject now for three days, Mr. Metz, and apparently you have the matter in mind, because you thought it

wise to produce what you have now produced. Why have you not produced the balance?

A. Because I think I brought everything I have, and that is what I found in the papers I have. I have not been home since, Mr. Kresel, and no one else could find it but myself. I put things everywhere in my place and I have got to look for them. I will be very glad to do so.

RXQ. 1638. When you received from Mr. Deiters this bill which is in evidence now, you told me on cross-examination that you were indignant at any such demand made by this man and you thought you wrote to him. It is that letter that I would like you to produce.

A. If I have it, I certainly will, Mr. Kresel.

RXQ. 1639. But when? Can you get it by tomorrow morning?

A. No. No one will know where to find it. I have to look in a dozen places for it. I never kept those things together.

RXQ. 1640. All right. Mr. Metz, with the Court's permission I am going to ask you to get the copy of that letter written by you to Mr. Deiters and copies of all other letters written by Mr. Deiters to you and I shall ask the Court's permission to use those as soon as you can get those here?

A. I shall be very glad to comply with that request.

RXQ. 1641. Even though the Government's case should be closed.

A. Anything I have I shall be glad to send you, Mr. Kresel. Mr. Deiters probably has the originals if they were sent, and you can get them that way.

RXQ. 1642. Notwithstanding this unfounded demand that he made on you last October, you still continued in correspondence with this man Deiters, and continued to receive affidavits from him; is that right?

A. I can not help what he sent me.

RXQ. 1643. Did you or did you not?

A. He continued to send me stuff, yes, I will put it that way.

RXQ. 1644. All right. And you continued corresponding with him, did you not?

A. I do not know as I did correspond. If I did I will find the copies and bring them. He has the letters if I did. I do not recall, Mr. Kresel.

RXQ. 1645. And in such correspondence as you had with him do you not recall that you assumed toward him a friendly attitude?

A. I was very sorry for the man having lost his position at all times, yes, sir, because he tried to do the right thing, I think.

RXQ. 1646. Now look at this letter and tell me whether that is a letter that you wrote to Mr. Deiters on March 23, 1923? (Handing witness).

A. Yes, that is the acknowledgment of that letter in all probability.

RXQ. 1647. "Yes" is the answer?

A. That is the answer.

MR. KRESEL: May I have that marked for identification?

Marked for identification "Defendant's Exhibit J."

RXQ. 1648. I noticed yesterday that amongst the large batch of correspondence that was introduced, that you had in 1914 and 1915 concerning these dyes importations, there was a letter of introduction given to you by Secretary of State Bryan to Ambassador Gerard in Berlin?

A. Yes, sir.

RXQ. 1649. That was on the occasion of your visit in the latter part of 1914?

A. Yes, sir.

RXQ. 1650. At the same time you testified you carried a letter of introduction from Dr. Albert?

A. Yes, sir.

RXQ. 1651. Why do you not produce that one?

A. Because I left that in Germany with the people it was addressed to.

RXQ. 1652. Have you not a copy of it?

A. No, I never had a copy of the letter. Certainly not. It was a sealed letter presented to some one in Europe and I presented it.

MR. ANDERSON: I think, if your Honor please, I should note an objection to any examination on the matter introduced yesterday in the form of correspondence, on the ground that it was stated at the time it was introduced it was for the purpose of meeting the evidence on cross-examination and completing the evidence as to the relations of this witness to the matter of dye importations, which was brought out purely and solely on cross-examination. Your Honor will recall this was purely a value witness so far as the Government is concerned.

THE COURT: Yes, but is there not this difficulty with that situation, Colonel Anderson,—that it was introduced to offset certain of the testimony introduced in answer to questions of Mr. Kresel, and if this creates a new situation I take it that the re-cross-examination would be allowed.

MR. ANDERSON: I did not understand your Honor's rule on that subject. I want to state that I have not the slightest objection to re-cross-examination, provided that on any matter which is brought out I may have the right to re-examine again on those points. But I did not know that your Honor's rule was that way.

MR. KRESEL: I am through with that point; I am going to pass on to something else.

MR. ANDERSON: I did not know the rule of this Court.

RXQ. 1653. About this talk that you had with Mr. Oppenheimer, or Dr. Oppenheimer, in Berlin, the telegram which you received asking you to see Dr. Oppenheimer was from the Farbwerke-Hoechst Company, of Germany?

A. The Farbwerke vorm. Meister Lucius & Bruning, the German name. We speak of it as Farbwerke-Hoechst. The Farbwerke of Hoechst, we will put it that way, or somebody connected with it. I do not know what individual, but of that concern.

RXQ. 1654. You can produce the telegram?

A. I may have it in my papers and I will look when I get home and be glad to give it to you, Mr. Kresel, very glad to give it to you.

RXQ. 1655. You have not known him before that time?

A. No, sir.

RXQ. 1656. He was a total stranger to you?

A. Yes, sir. I knew that there was one Dr. Oppenheimer there.

RXQ. 1657. But he was a total stranger to you up to that time?

A. Yes, sir.

RXQ. 1658. And the telegram simply asked you to see him?

A. Yes, sir.

RXQ. 1659. Then you went to see him?

A. Yes, sir.

RXQ. 1660. Then I assume the telegram gave his address.

A. I do not know. I looked him up in the telephone book. I found him any way, and saw him.

RXQ. 1661. All you had was a telegram come to see Dr. Oppenheimer?

A. Of the Berlin Company.

RXQ. 1662. Of the Berlin Company?

A. He represented the Berlin Aniline Company.

RXQ. 1663. What do you mean, one of the Big Six?

A. One of the Big Six. He was their attorney.

RXQ. 1664. That is, one of the Big Six firms in Germany?

A. Yes, sir.

RXQ. 1665. So you went to see Dr. Oppenheimer and you had a fifteen minute talk with him?

A. About that, yes, sir.

RXQ. 1666. Only fifteen minutes?

A. Not much longer.

RXQ. 1667. He was in a great hurry?

A. Yes, sir.

MR. ANDERSON: May I suggest that this matter has been gone over fully in the cross-examination, and nothing further was brought out except to enlarge and complete his statement on that subject. I think that is hardly a subject for re-cross examination. We will be going on indefinitely if we beat the bush over and over again.

MR. KRESEL: No, we will not do that. On the contrary this is entirely a new matter. Your Honor will recall that I asked this witness whether he had conversations with Germans abroad with reference to the return of these patents. He testified first that he did not and then I read to him his testimony before the House Ways and Means Committee, and then he said that he had. He never once mentioned Dr. Oppenheimer in that connection.

THE COURT: You may take the aswer subject to the general and specific objections of counsel for the Government.

RXQ. 1668. You say that Dr. Oppenheimer was in a hurry, he was packing his bag, on his way to London. I want you to tell us as nearly as you can everything that was said between you and Dr. Oppenheimer on that occasion?

A. He told me that they had received a telegram from a firm of Washington attorneys, somebody and Brown; a gentleman from Cincinnati, a Judge, I do not recall the name at the moment, and Brown was the firm; that they would have to put in their claim under the law for the royalties on the German patents before or prior to a certain date, and on the strength of that telegram he was coming over here to take up the question and put in those claims if it was necessary. That was the only subject of conversation and the only conversation. And I gave him the address of Mr. Vandiver and Mr. Wilcox, told him they had studied the questions and to see them when he came here, and he did. That is all I had to say. The other things were purely personal, family matters and in general, but there was nothing else on this to discuss.

RXQ. 1669. My question was as broad as I could possibly make it, namely that you should state everything between you. Have you done that?

A. That is the substance of all there was to the best of my recollection. Yes, Mr. Kresel, that was the substance of the conversation. With regard to the suits for the licenses—for the fees.

RXQ. 1669-a. With reference to the trade-marks you have produced a letter from a lawyer named Nims on behalf of The Chemical Foundation. Have you not other correspondence with the Chemical Foundation concerning those trade-marks?

A. Not with me. I shall be glad to look it up when I get back and send you what I have.

MR. KRESEL: That is all.

MR. ANDERSON: You may stand aside, Mr. Metz.

THE COURT: Are you through with the witness, both sides?

MR. ANDERSON: I am through with him.

THE WITNESS: May I return home now?

MR. ANDERSON: It will be understood that he is discharged from the subpoena with the understanding if he finds any correspondence he will let Mr. Kresel have it as promised.

MR. KRESEL: No, I would rather have it, Colonel, that whatever correspondence he has he should submit to you, as he is your witness, and then, if you will, be good enough to let me see it.

MR. ANDERSON: I will do it with great pleasure. Can he be discharged from the subpoena?

MR. KRESEL: Yes.

MR. ANDERSON: On the general understanding that if we need you, Mr. Metz, you will return upon request at any time?

THE WITNESS: Yes, on notice.

THE COURT: Then you need not return unless requested by counsel for one side or the other.

THE WITNESS: Thank you. I want to thank you for your courtesy, your Honor.

MR. ANDERSON: We will ask permission now to take up the introduction of additional documentary evidence which was interrupted by this testimony. I am sorry that this has to be done.

THE COURT: Is that the remainder of your documentary evidence?

MR. GALLOWAY: We have the remainder ready and we shall put it in at this time.

MR. KRESEL: May I ask Mr. Metz one more question, if he has not already left.

RXQ. 1670. I direct your attention to the memorandum which is marked Defendant's Exhibit I for Identification, wherein I find this statement relating to the cases which the Department of Justice now has under investigation at Wilmington. That refers to this case, does it not?

A. I do not know what he refers to.

RXQ. 1670-a. Read it and just tell me.

A. (Examines letter). I presume that is this case, yes, sir.

RXQ. 1671. And also please look at the letter Defendant's Exhibit I-1 for Identification, in which I notice the concluding sentences as follows:

"I am enclosing herewith copy of all information which I have in the hope that you may find use for same at Washington."

A. That man wrote me that.

MR. ANDERSON: I did not object because I do not think the witness can interpret the letters. I am perfectly willing to let the letters go into evidence, but I do not think the witness's interpretation of letters is admissible.

MR. KRESEL: Oh, yes, the witness's knowledge as to these letters is admissible.

MR. ANDERSON: But the objection has been made in this case a number of times when an effort has been made to explain his correspondence, and I respectfully suggest that that correspondence should either be put in evidence or—

MR. KRESEL: I am going to put it in evidence now.

MR. ANDERSON: Then I move to strike out the answer of the witness as to the reference, and your Honor can reach your own conclusions on argument or in any other way as to what that correspondence means.

MR. KRESEL: Not at all. I object to that procedure, if your Honor please.

THE COURT: Are we not in this position: We can not tell possibly from incomplete correspondence the meaning of all the terms. If Mr. Metz produces the entire correspondence, the correspondence as a whole would speak for itself, but until that is produced is not testimony of the witness as to the meaning of terms in there, which

were not self-explanatory, pertinent? I do not mean pertinent, because I do not mean to say that any of the testimony is going to be pertinent, but proper.

MR. ANDERSON: Your Honor asked the question and I should certainly say no, sir, that it is a letter from someone else to him. What that person may have meant by that letter, which he said was not and does not appear to be in response to anything, where he is undertaking to interpret the other person's mental processes or state of mind, I quite agree is utterly immaterial. Yet I respectfully suggest that that evidence is wholly illegal and incompetent. What the letters mean is shown by the letters; let the letters go in, let the papers go in, I have not the slightest objection to it, subject to my general objections as to immateriality and irrelevancy and as outside of the direct examination, etc. But as to this evidence I would have to move to strike out because I regard it as a violation of the law of evidence for the reasons stated.

THE COURT: You have offered the letters?

MR. KRESEL: I am now offering them. I offer in evidence Defendant's Exhibit I for identification.

THE COURT: Admitted, subject to the Government's objections heretofore stated.

Received in evidence and marked "Defendant's Exhibit No. 26." (*See Exhibits, Vol. IV, page 2089.*)

THE WITNESS: May I ask your Honor a question?

(Witness speaks to Court.)

THE COURT: Will both of you hear what Colonel Metz has to say and make any inquiries you wish to make?

MR. ANDERSON: I beg to ask an additional question, if counsel will permit me.

MR. KRESEL: May I proceed with these exhibits?

THE COURT: Yes, you may proceed with these exhibits and make further inquiry afterwards.

MR. KRESEL: I read Defendant's Exhibit No. 26. (Reading).

Now I offer in evidence Defendant's Exhibit I for identification.

THE COURT: Admitted under like conditions.

Received in evidence and marked "Defendant's Exhibit No. 27." (*See Exhibits, Vol. IV, page 2089.*)

MR. KRESEL: I now read Defendant's Exhibit 27 (Reading).

MR. ANDERSON: I want to make the further objection to the introduction of that memorandum that it is pure hearsay and has absolutely nothing to do with the issues of this case.

THE COURT: Is that a communication to the witness?

MR. ANDERSON: To the witness. It is a memorandum sent to the witness with this letter, it does not appear by whom made—but was sent to him by this man in Washington; and I shall show in a moment without his having any knowledge of it until he received it.

MR. KRESEL: And I have his reply thereto, which I shall read in a minute.

THE COURT: Your objection is noted, Colonel Anderson.

MR. KRESEL: I now offer in evidence Defendant's Exhibit I-2 for identification.

THE COURT: Admitted under like conditions.

Received in evidence and marked "Defendant's Exhibit No. 28." (*See Exhibits, Vol. IV, page 2090.*)

MR. KRESEL: I shall not stop to read that. That appears to be an extract from the Congressional Record. I shall simply introduce it.

THE COURT: It was another enclosure in the same letter?

MR. KRESEL: Yes, in the same letter, your Honor. I now offer in evidence Mr. Metz's acknowledgment of the receipt of those papers, which was previously marked Defendant's Exhibit J for identification.

MR. ANDERSON: Same objection.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 29." (*See Exhibits, Vol. IV, page 2097.*)

MR. KRESEL: Now let me read that (Reading). That is all.

MR. ANDERSON: I will ask a question or two in view of that correspondence.

THE COURT: Is there a question pending?

MR. ANDERSON: No, sir.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 1672. I want to ask if you, prior to this correspondence knew anything of the matter that this Mr. Dieters wrote you about?

A. Mr. Dieters called me on the telephone.

MR. KRESEL: I object.

A. (Continuing) No. Yes; I will say yes, and qualify it.

MR. KRESEL: Wait a minute. Yes is an answer.

RDQ. 1673. Then say what you did know about these matters?

MR. KRESEL: About what matters?

MR. ANDERSON: About the matters referred to in the letter and correspondence.

A. Mr. Dieters called me on the telephone and said he had some information I ought to have. He wanted to come to New York to tell me. I said, "Don't you bother to come to New York to tell me anything. If you want to tell me anything, send it to me by mail." "Well, I don't dare mail this. I don't want my name to appear on it." I said, "Put it in a separate envelope and I will tell you if I received it."

I think they came in two separate letters; the copies I gave you and the statement in one letter, and the other letter in a separate one. That is my recollection. There was no use of him coming to New York. I would have had to pay his fare if he came. I said to him, "Don't bother me. If you have anything, send it to me. I don't care what they say about me." That was the substance of the communication.

He was always coming with things of that sort to me without my suggestion or request. He used to hang around Mr. Moses' office and was giving me things all the time, telling me why he lost his position, because he tried to put me on to facts, that they were trying to injure me in the Chemical Warfare Service.

RDQ. 1674. And that is the whole connection of this correspondence?

A. Absolutely. I gave him money purely on charity, because he lost his position. He had had $3,500 a year and he was out of a job, and his wife was sick, and a mortgage on his house, and he was ailing all the time. He was even in my office last week before I came down here and said they were going to subpoena him. I said, "Well, go down and tell the truth. Don't bother me with that stuff." Then he asked me, "You don't want anything?" "Not a thing." He said, "Will you give me some money to go home?" I gave him ten dollars, and I told him if they served him with a subpoena,

he should go and tell the truth; that is all he should do, and that is what I told him; and there are witnesses in my office who will testify that is what I said. That is all I told him, sir.

MR. KRESEL: Is that all?

MR. ANDERSON: That is all.

THE COURT: Does that conclude your case?

MR. GALLOWAY: I think probably we will have some other witnesses. We plan to bring those on this afternoon.

FOURTEENTH DAY.

Wilmington, Delaware,
June 25th, 1923, at 8.30 o'clock A. M.,
Standard Time.

Before:
HON. HUGH M. MORRIS, U. S. District Judge.

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. ANDERSON: May it please the Court, on Friday, I think, of last week, we had the cross-examination of Mrs. Wilson, the representative of the Federal Trade Commission. She was asked as to a letter of transmittal of notice of accrued royalties on licenses issued under the direction of the Federal Trade Commission, informing the Alien Property Custodian of such accruals, and counsel asked if she had the letter. She did not at the time. I have this morning a letter dated August 29, 1919, signed by Mrs. Wilson, Chief of Enemy Trade Division, addressed to the Alien Property Custodian, covering one of those transmittals, as a sample of the letter, and I am informed that the letters were substantially of the same form, except with such variations as were necessary owing to the change of facts in each case. I have spoken to Mr. Kresel and he agrees that this letter may be introduced without recalling Mrs. Wilson.

I therefore offer in evidence letter dated August 29, 1919, addressed to the Alien Property Custodian, signed "M. R. Wilson, Chief of Enemy Trade Division," on the letterhead of the Federal Trade Commission; and ask that the same may be admitted, identi-

fied and read in evidence as Plaintiff's Exhibit No. 406.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 406." (*See Exhibits, Vol II, page 761.*)

MR. ANDERSON: By consent of counsel on the other side, I should like to interrupt the cross-examination of Mr. Metz this morning to call Colonel Miller, who is compelled to leave the city for the West today at 10:50, and might not return before the Government close its case. Mr. Kresel has very kindly consented.

MR. KRESEL: No objection.

MR. ANDERSON: I will call Colonel Thomas W. Miller.

THOMAS W. MILLER.

THOMAS W. MILLER, called as a witness on behalf of the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Please state on the record your full name and place of residence?

A. Thomas W. Miller, Wilmington, Delaware.

Q. 2. Do you now hold any official position with respect to the Government of the United States?

A. Alien Property Custodian.

Q. 3. Before you became an officer of the Government, what was your business, Colonel Miller?

A. Most of the time before I accepted this appointment I had been in the service of the Government either in the Army or at Washington in Congress. Previous to that I was a State official; before that a law student; and before that I had been in the manufacturing business away from Delaware.

Q. 4. Were you an officer in the Army in the late war?

A. Yes, sir.

Q. 5. What was your official rank?

A. I came up through the various grades, from enlisted man to Lieutenant Colonel when I was discharged.

Q. 6. When were you in Congress?

A. The Sixty-fourth Congress, from 1915 to 1917.

Q. 7. When were you appointed and when did you qualify as Alien Property Custodian?

A. I was appointed March 12, 1921. I was sworn in March 16, 1921.

Q. 8. You have been discharging the duties of that office since that time?

A. I have.

Q. 9. Colonel Miller, it appears in the record in this case that there were two assignments from the Alien Property Custodian to the Chemical Foundation, Incorporated, as Alien Property Custodian, one dated the 27th day of April, 1921, and the other the 5th day of November, 1921. These instruments are filed as exhibits J and K with the Bill of Complaint and have been introduced in evidence here. You executed those instruments, did you?

A. I did.

Q. 10. I will take up first the assignment of April 27, 1921. At the time that you executed that assignment had you ever seen or read the Charter of The Chemical Foundation, Incorporated?

A. I had not.

Q. 11. You had then been Alien Property Custodian—

A. As to whether I had ever seen it, it may have been in pamphlets in my office, but I had not read it.

Q. 12. You had then been Alien Property Custodian about five or six weeks, had you?

A. Yes, sir.

Q. 13. Had you any personal knowledge of the character of the corporation known as The Chemical Foundation, Incorporated?

MR. KRESEL: Pardon me a minute. I object to that question as being indefinite. I do not know what is meant by "the character of the Chemical Foundation."

THE COURT: I think your objection is well taken.

MR. ANDERSON: I will withdraw the question. I was trying to shorten it.

Q. 14. Will you state all the facts within your own knowledge as to your execution of that order for the assignment of the patents mentioned therein, which are commonly called the Norma Company of America?

MR. KRESEL: I am sorry, Colonel Anderson. But I must object to the indefinite character of that question. This is direct examination.

THE COURT: I think the objection is well taken.

MR. ANDERSON: Colonel Miller has got to leave on a train at 10:50 and I am trying to shorten it. Of course, if there is an objection, I withdraw the question.

Q. 15. Did you have any talk with any of the officers of The Chemical Foundation, Incorporated, Mr. Garvan, Mr. Hoguet or Mr. Choate, prior to the execution of that instrument?

A. Yes, sir.

Q. 16. With whom?

A. Mr. Francis P. Garvan and myself had not met until a fortnight after I was Alien Property Custodian.

MR. KRESEL: Pardon me a minute, Colonel. I ask that that part of the answer be stricken out

as not responsive. The question is with whom he had talked.

THE COURT: Let it be stricken out.

Q. 17. With whom had you talked?

A. May I say, Colonel Anderson, this has nothing to do with the Norma patents.

Q. 18. I will ask you this: Did you have any talk with Mr. Garvan prior to that time?

A. Yes, Mr. Garvan and myself met—

MR. KRESEL: Pardon me a minute, please. Prior to what time, Colonel?

MR. ANDERSON: The assignment. Of course, I am talking about the assignment on the 27th day of April, 1921.

MR. KRESEL: I simply wanted to know which assignment you were talking about.

MR. ANDERSON: I said I was going to discuss the one of the 27th at this time.

A. Mr. Garvan and myself met at my office, as near as I can recollect it, on the last day of March, 1921. It was the first time I had had the pleasure of meeting him.

Q. 19. You had some talk with him at that time?

A. Yes, sir.

Q. 20. Tell as nearly as you can what took place, what was the conversation; that is, what he said and what you said, and what was the subject of discussion?

A. Mr. Garvan called upon me as an act of courtesy to officially turn over the keys and discuss certain affairs relating thereto, as a predecessor would discuss with his successor.

In the course of our conversation, he discussed with me the general subject of the chemical business in the United States, told me of his connection with The Chemical Foundation and indicated to me that The Chemical Foundation would be very glad to have me as a director and as one of their officials.

I can not remember the details of a personal conversation as between us two, but it was along those general lines.

Q. 21. What, if anything, did you then know of The Chemical Foundation?

A. At that time I knew very little about The Chemical Foundation, because it had been wholly divorced from any associations that I had had in connection with the war work. I indicated to Mr. Garvan that naturally I was interested in the matter of American commercial enterprises, and I at that time indicated a degree of acquiescense in the proposition that he put to me.

Q. 22. What proposition did you mean?

A. That I go on the directorate and become an official. I will say right there, if I may be permitted, that the office of Alien Property Custodian is perhaps larger in scope and more versatile than most any other Government department; and when The Chemical Foundation had first come to my attention, I knew Mr. Garvan was President, I considered it, I will say in all candor, as a portion of the duties of the Alien Property Custodian at that time. At that time, now, we are talking of up to March, 1921.

Q. 23. Talking about 1921. Now, in regard to this particular assignment which appears in evidence as an assignment of certain patents or patent rights to the Norma Company of America, do you recall when that matter was first brought to your attention?

A. It was brought to my attention some time in April, 1921, by one of my subordinates, who came to me in the usual routine manner and asked me whether I would be willing—

MR. KRESEL: Just a minute, Colonel. We must object to any conversation between the Colonel and his subordinates as not binding upon the defendant, immaterial and irrelevant.

A. (continued) Well, I will say it this way—

MR. KRESEL: Pardon me a minute, Colonel, The Court has not ruled yet.

THE COURT: Do you or do you not insist upon the answer?

MR. ANDERSON: He has answered the question; it came to his attention, was brought to his attention by one of his subordinates some time in April.

THE COURT: What is your position with respect to the objection taken by Mr. Kresel?

MR. ANDERSON: My position is that I do not desire the conversations between him and his subordinates; but I do think it is important in this case, or, at least, a part of the case presented by the Bill, to show how and when the matter came to his attention, and what he did.

THE COURT: There is no objection to that?

MR. ANDERSON: That part of the answer is not responsive. Colonel Miller was going on to explain; but I have no desire for that.

A. Well, I have not finished it yet, if I may be permitted. Mr. Nones of the Norma Company of America called me in the usual course of business in April, 1921, and indicated his desire to purchase.

MR. KRESEL: One minute. I object to what Mr. Nones' desire was as hearsay and not binding on the defendant.

THE WITNESS: May I put it this way: that an offer—

MR. ANDERSON: One minute, Colonel. If your Honor please, the question here is the circumstances under which this gentleman made this assignment. I do not care for the conversations with Mr. Nones. I only want what instructions he gave and do not care for the conversation.

THE COURT: You do not ask for that?

MR. ANDERSON: Mr. Nones' calling on him has been a fact in the case. That is all, I do not care for the conversation with him at all.

Q. 24. Mr. Nones called on you and the matter was called to your attention by one of the subordinates of your department?

A. Yes.

Q. 25. Those are the two facts. Do you recall executing the assignment of April 27th; do you recall anything about it yourself?

A. It came up to me in the usual routine manner and was signed by me; because I had agreed—

MR. KRESEL: One minute, please.

THE COURT: The objection is well taken.

Q. 26. It came to you in the usual routine manner and was signed by you. At that time had you read the Executive order theretofore issued by Mr. Polk or the Executive order theretofore issued by the President in regard to the sale to The Chemical Foundation, all of which were introduced in evidence?

A. No, sir.

Q. 27. Do you know by whom the matter of this sale to The Chemical Foundation of the patents embraced in this suit was actually handled in your office?

A. This was a corporate management matter.

Q. 28. Do you know what officer of your department handled it?

A. Well, I dealt directly with Mr. Paul Smith, who was my Chief of Corporation management.

Q. 29. Did you at that time know the history of the organization of the defendant Chemical Foundation?

A. Only in a general way.

Q. 30. Did you know at that time of the fact that The Chemical Foundation or the stock of The Chemical Foundation had been subscribed by the members of the American Dyes Institute?

MR. KRESEL: One minute, please. We object to that on the ground it is immaterial and irrelevant as to whether this witness knew that fact or not.

MR. ANDERSON: It is averred affirmatively in the answer, the witness already knew the history and organization of this defendant. The answer avers that the witness was fully informed of and knew the history and organization of this defendant; second, the impelling and inducing motives of its creation; third, its charter and purposes; fourth, the muniments of title; fifth, the considerations given for each and all of the patents and other properties and rights sold, assigned and transferred to it. Those averments are made in the answer as affirmative averments. I have a right to ask the witness if he did know those.

MR. KRESEL: It does not make the slightest bit of difference what is averred in the answer. It is no part of the plaintiff's case, and to the plaintiff's case under the pleadings it is immaterial and irrelevant whether this witness knew at the time when he executed this assignment the fact that is sought to be elicited. If the defendant desires to show that, it is the defendant's duty to show it and not the plaintiff's, but upon the plaintiff's case we say it is immaterial and irrelevant.

MR. ANDERSON: I do not have to recall witnesses in rebuttal where there is an affirmative allegation; I can meet that allegation in the *prima facie* case.

THE COURT: That is part of the judicial discretion involved in the conduct of the trial.

MR. ANDERSON: Certainly.

THE COURT: You may take your answer under the general rule. But you understand, Colonel

Anderson, that if you go into that in chief you must go into it fully and it is not open to you in rebuttal.

MR. ANDERSON: My reason for going into it—

THE COURT: No, I do not care anything about your reasons; but if you go into it in chief you do not have another opportunity to go into it in rebuttal.

MR. ANDERSON: I understand, sir, and in view of the objection, and to save time, because I want to get this witness off, I will withdraw it, stop where I am on that, and perhaps go into it later.

Q. 31. Colonel Miller, it appears here that there was another assignment?

A. Are we all off that April 27th one?

Q. 32. Yes.

A. I must say I had not finished.

THE COURT: You are in the hands of your counsel.

MR. ANDERSON: We will stop there for the moment.

Q. 33. As to the one of the 5th day of November, 1921, which is in evidence, which undertakes to confirm certain sales theretofore made of patents, trademarks, etc.; do you know how this matter first came to your attention?

A. It came in the usual routine way.

MR. KRESEL: Please answer just yes or no.

A. Why, I know, yes.

Q. 34. Please state how it came to you and by whom it was brought to your attention?

MR. KRESEL: I do not object to the question in so far as it asks by whom it was brought to his attention. I do object to the question as to how it came to his attention, as being too indefinite.

THE WITNESS: Can I tell the individual?

THE COURT: Just a minute, Colonel.

Will you divide your question, then, Colonel Anderson, or do you press it as it stands?

MR. ANDERSON: It will probably simplify it if I divide it, so as to save time.

Q. 35. First, I will ask you if you know who brought it to your attention?

A. It was brought to my attention by Mr. Zimmerman, who was chief of my patent section, and Mr. Ewing, who was in the Bureau of Law.

Q. 36. Could you state whether you had at that time ever read the charter of The Chemical Foundation?

A. No, sir.

Q. 37. Could you say whether at that time you were familiar with the orders entered by Mr. Polk and the Executive Order of the President of February 13, 1920?

A. No, sir.

Q. 38. Do you recall what, if anything, was stated to you at the time you signed or authorized this order?

A. I directed it—

MR. KRESEL: Pardon me a moment. Do you mean authorized or signed?

MR. ANDERSON: I withdraw the word "authorized."

Q. 39. At the time you signed this order or when it was brought to you?

A. This order came to me—

MR. KRESEL: Please answer yes or no.

A. State that question again, please.

(Q. 38 repeated as above recorded.)

A. Yes, I recall it.

Q. 39a. Can you please state what was said to you on the subject by Mr. Zimmerman?

MR. KRESEL: I object to the question upon the

ground that the defendant cannot be bound by any conversation between this witness and his subordinate, Mr. Zimmerman.

MR. ANDERSON: I do not deny that the defendant can not be bound, but I do respectfully suggest that the witness can state the circumstances under which he executed this order, for the knowledge of the Court. I will further show in this case that Mr. Zimmerman is now and has been long since an employee of The Chemical Foundation; and, therefore, I must rely upon this witness.

MR. KRESEL: Of course, the latter fact, can have no effect upon the question that is pending. The fact that Mr. Zimmerman is said to be in the employ of The Chemical Foundation, it seems to me, has no bearing upon the question as to whether this particular question is open to objection or not. Colonel Anderson concedes that the conversation between Colonel Miller and Mr. Zimmerman can in no way bind the defendant; and if that is so, it is immaterial and irrelevant, and we object to it.

THE COURT: Have you anything further to say, Colonel Anderson?

MR. ANDERSON: No, sir.

THE COURT: I think the objection is well taken, but you may put your answer of record if you desire, under our general rule.

Q. 39b. (continuing) Please answer the question, Colonel Miller?

A. I had given instructions to have these records brought up to date, it really being a routine arrangement, in order to clear the titles and to enable American users of these trade-marks to obtain them from The Chemical Foundation properly.

MR. KRESEL: Just a minute please. I did not

interrupt Colonel Miller because I felt that perhaps he would get on to the conversation. He has been asked about a conversation. The answer up to the present has not stated a word of the conversation.

THE COURT: Let the answer be stricken out and the question repeated.

Q. 40. What were the representations to you as to the situation that brought about this order?

MR. KRESEL: I object to the question in that form.

THE COURT: The objection is sustained. Let the prior question be repeated, unless it is withdrawn, Colonel Anderson.

A. I can not give the exact words, but I know it was in compliance with my orders that these records be brought up to date. The asignment was brought to me and I signed it on the first of November, 1921.

Q. 41. Could you state approximately how many documents you sign a day in your position?

MR. KRESEL: If the Court please, I object to that upon the ground that it is immaterial and irrelevant, and I do not understand that Colonel Anderson desires to use the fact of the number of documents as an excuse, if an excuse is needed by Colonel Miller, for the signing of these documents. I object to it upon the ground that it is immaterial and irrelevant.

THE COURT: The objection is sustained.

MR. ANDERSON: I note an exception.

Q. 42. You stated that you had a talk with Mr. Garvan about becoming director of The Chemical Foundation, as I understand it, in March, 1921; is that true?

A. Yes, sir.

Q. 43. It appears in the minutes of The Chemical Foundation introduced in evidence here, that on April

4, 1921, you were elected a director of The Chemical Foundation; and, thereafter, the minutes contained the following entry:

> "The President then stated that Mr. Thomas W. Miller, who had been elected director of the Corporation at the adjourned annual stockholders' meeting held on the 4th day of April, 1921, had communicated to him that owing to the demands on his time, he found it impossible to accept the honor of being a director of The Chemical Foundation, Incorporated, and for that reason had declined to qualify."

I have read from the minutes of the Board of Directors of the 21st day of June, 1921. Can you state whether you ever served either as director or as vice-president of The Chemical Foundation?

A. I did not qualify; therefore I could not serve.

Q. 44. Did you have any talk with Mr. Garvan on the subject after the one you mentioned in March?

A. Yes. I can not recall the exact date; but Mr. Garvan and I talked this over a number of times; and we both mutually agreed that because of the pressing official duties I could not accept or qualify.

MR. ANDERSON: The witness is with you, Mr. Kresel.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 45. Colonel, how long before your appointment as Alien Property Custodian—I mean your actual appointment—did you know that you were to be appointed?

A. About a week, Mr. Kresel.

XQ. 46. During that week did you undertake to inform yourself in any way about the duties of Alien Property Custodian or the history of that office?

A. Right there, I was sworn in the 16th of March,

and the week is running back from the 16th of March. No, sir; I needed all the time I had, Mr. Kresel, to—

XQ. 46a. Well, you did not do it?

A. No, sir.

XQ. 47. Just let us stop there. Now, before you became Alien Property Custodian, of course, you had a general knowledge of what that office was?

A. I must confess, Mr. Kresel, I did not. Of all the wartime activities I know least about that.

XQ. 48. Well, you did not?

A. Did not.

XQ. 49. On the 16th of March, 1921, when you were sworn in, you surely had a general knowledge of what the office was that you were about to take?

A. As I—yes, a general knowledge, very general.

XQ. 50. That is all I am asking. At least you knew who had been your predecessor?

A. I had not had the pleasure of meeting him, but I knew who he was.

XQ. 51. And you knew that your immediate predecessor was not the first officer that occupied the office of Alien Property Custodian?

A. Yes.

XQ. 52. In other words, when you were sworn in as Alien Property Custodian you knew that Mr. A. Mitchell Palmer had occupied that office?

A. Yes.

XQ. 53. And that he had been preceded by Mr. Garvan, whom you were succeeding?

A. Yes.

XQ. 54. And you knew, did you not, that that office had been in existence since the fall of 1917?

A. Yes.

XQ. 55. When you entered office, you certainly then set about to inform yourself of what the office was, what the duties of the Alien Property Custodian were,

what property he had in charge; in a general way to understand your job, so to speak, did you not?

A. Yes, sir, and I am still engaged in that practice.

XQ. 56. And I assume that one way that you had of informing yourself upon the subject was the records of the office?

A. Oh, yes.

XQ. 56a. And you certainly had access to those and made use of those in so far as you felt it necessary?

A. As the cases arose, when it was necessary.

XQ. 57. Well, it was not very long after you became Alien Property Custodian that you learned that your predecessor had made a report to Congres as to the activities of that office, is that not right?

A. The report that you refer to was February 27, 1919, by A. Mitchell Palmer?

XQ. 58. February 22nd.

A. February 22nd, yes, by A. Mitchell Palmer.

XQ. 59. You were familiar with that report?

A. Oh, I knew that—there was only one copy in the office, but I had access to it.

XQ. 60. And you certainly availed yourself of whatever information that document disclosed, did you not?

A. Well, Mr. Kresel, I wouldn't swear on the stand today that I read it through from cover to cover immediately.

XQ. 61. Oh, I understand that; but it was not very long after you became Alien Property Custodian that you did refer to that report, was it?

A. A trust company that has—

XQ. 62. Now just answer my question, please.

A. I won't say that I have—

XQ. 63. Very well, then, I will have to be satisfied with your answer; but please do not go off into

something else. At all events, the time did arrive when you read that report; not from cover to cover, as you suggest; but you read it?

A. Well, my familiarity—

XQ. 64. No, no; now did you?

A. I did not rely on that report to familiarize—

XQ. 65. I did not ask you anything about relying on it. Now, if you will please pay attention to my question: I say, a time arrived when you did read that report, did there not?

A. Under oath here I will not say that I have read that report in its entirety, no.

XQ. 66. I did not ask you whether you had read it in its entirety.

A. I have refered to it, yes, sir, and still refer to it.

XQ. 67. All right. And when you referred to it, you could not have failed to observe that in that report there was a statement as to The Chemical Foundation; is that not right?

A. I did not read that, as far as I recollect, Mr. Kresel.

XQ. 68. You mean that as you sit there now on the witness stand you do not know that that report refers to The Chemical Foundation?

A. Why, naturally it does, because that is one of the trusts in the office—

XQ. 69. Now, all right; it does.

A. (continued) Of fifty thousand.

XQ. 70. It refers to the organization of The Chemical Foundation, doesn't it?

A. I—

XQ. 71. Doesn't it?

A. I presume it does.

XQ. 72. It refers to the sale of the patents here in question to The Chemical Foundation, does it not?

A. I presume it does.

XQ. 73. It refers to the price paid for the patents, does it not?

A. I presume it does.

XQ. 74. It refers to the conditions of its charter, does it not?

A. I presume it does.

XQ. 75. Well now, among the records of the Alien Property Custodian's office when you assumed charge in March, 1921, there were copies of the assignments that had been made by your predecessor to The Chemical Foundation, were there not?

A. No, Mr. Kresel. I had to go to the Patent Office for those.

XQ. 76. There were not?

A. There were not.

XQ. 77. That is your answer?

A. To the best of my knowledge and belief.

XQ. 78. You had a search made?

A. Yes, sir.

XQ. 79. And could not find it?

A. Yes, sir.

XQ. 80. When did you institute the search?

A. I have no recollection, Mr. Kresel.

XQ. 81. Well, I am not pinning you down to a specific date. What month? What year?

A. I really can't answer that with any degree of certainty.

XQ. 82. How soon after you became Alien Property Custodian?

A. I can not answer that with any degree of certainty.

XQ. 83. Well, approximately?

A. I know this: that when the time came—

XQ. 84. No, no; now, please. Approximately when was it that you instituted a search for these assignments and could not find them?

A. I can not give you any approximate date.

XQ. 85. Was it shortly after you became Alien Property Custodian?

A. Why, Mr. Kresel, I really don't know.

XQ. 86. Was it before this suit was instituted?

A. Oh, it must have been before that; it must have been.

XQ. 87. You know this suit was instituted in September or October of last year?

A. Yes.

XQ. 88. So it was before that, anyway?

A. Oh, yes, certainly.

XQ. 89. Now, did you find any records in your office with reference to the transaction between the Custodian and The Chemical Foundation?

A. Oh, yes; there were records there, Mr. Kresel.

XQ. 90. Surely records from which you could learn and did learn what the transaction was that had taken place?

A. My general information—my information on the transaction was more of a general character, that I arrived at from discussions with friends of mine who were interested in it.

XQ. 91. I do not want to go into that, Colonel. You did learn what the amount of money was that had been paid to the Alien Property Custodian by The Chemical Foundation?

A. Yes, that was a matter of common knowledge. I knew that.

XQ. 92. Well, quite aside from being common knowledge, do you mean that your records, the Alien Property Custodian's records, did not show it?

A. Well, they must show it, Mr. Kresel.

XQ. 93. Did they not show it?

A. Well, I am not going to say on the stand under oath that I personally looked at the records that showed it.

XQ. 94. I did not ask you whether you looked.

I am trying to find out what you, as Alien Property Custodian, know about the records of your own office.

A. I know the records must show that a quarter of a million dollars was paid for the patents.

XQ. 95. Don't you know that they do show exactly what was paid?

A. I cannot qualify my answer any more than I have, Mr. Kresel.

XQ. 96. The best you will do is that they must show; is that it?

A. Yes.

XQ. 97. And that information was available to you the minute you put your foot into the office of Alien Property Custodian, was it not?

A. Together with information—

XQ. 98. Wasn't it?

A. (continuing) —on fifty thousand other matters.

XQ. 99. Well, wasn't it?

A. Yes.

XQ. 100. When you went into the office of Alien Property Custodian on March 16th—I think you said that was the date?

A. Yes.

XQ. 101. (continuing) 1921, you knew that Mr. Garvan was the President of The Chemical Foundation, did you not?

A. Oh, I knew that.

XQ. 102. You knew at that time that when the transaction between The Chemical Foundation and the Alien Property Custodian took place involving the sale of these patents Mr. Garvan had been the Alien Property Custodian?

A. Yes, sir.

XQ. 103. You say that you knew the amount of money that had been paid, whether from the records or from general conversation?

A. Yes, sir.

XQ. 107. You knew that the patents that were sold to The Chemical Foundation were German patents that had been seized by the Alien Property Custodian?

A. Yes, sir.

XQ. 108. You knew when you became Alien Property Custodian that the sale of the patents to The Chemical Foundation had not been a sale at public auction?

A. Yes, sir.

XQ. 109. You knew, therefore, that it had been at a private sale?

A. Yes, sir.

XQ. 110. You knew, did you not, that in order to have a private sale, there had to be an Executive order?

A. If the property was valued at over $10,000.

XQ. 111. And, of course, you knew that this property was valued at more than $10,000?

A. Yes.

XQ. 112. You knew that The Chemical Foundation was issuing licenses on these patents that had been transferred to it?

A. I knew that, Mr. Kresel, when the first transaction of that character came to my attention after taking office.

XQ. 113. How soon after taking office was that?

A. This Norma Company transaction.

XQ. 114. That was in April?

A. Yes.

XQ. 115. That was only about a month after you became Alien Property Custodian?

A. Yes.

XQ. 116. Yon knew when you took office who the voting trustees of the stock of The Chemical Foundation were?

A. I know I did not, Mr. Kresel.

XQ. 117. Did not Mr. Garvan in his conversation with you on the 31st of March tell you that Judge Ingraham and Mr. Bannard and Mr. Cleveland Dodge and two others whose names I do not now recall were the voting trustees?

A. Yes, he certainly did. But that was not when I took office. That was fifteen days later. You asked me if I knew when I took office.

XQ. 118. All right. Fifteen days later.

A. I want to be specific as long as you want me to be.

XQ. 119. Fifteen days later you knew that?

A. Yes.

XQ. 120. But up to the time of the talk with Mr. Garvan on the 31st of March, you had not read the charter of The Chemical Foundation; that is your statement?

A. No, sir.

XQ. 121. Nor had you read it prior to the execution by you of this assignment of April 26th?

A. No, sir.

XQ. 122. I want to take you back for a minute to your conversation with Mr. Garvan on the 31st of March, 1921. As I understand it, that was the first time you met Mr. Garvan?

A. Yes, sir

XQ. 123. And he called on you at your office?

A. Yes, sir

XQ. 124. That is, the Alien Property Custodian's office?

A. We had a long distance telephone conversation previously, but just merely perfunctory.

XQ. 125. At that conversation, Mr. Garvan told you in some detail of his connection with The Chemical Foundation, did he not?

A. Oh, yes.

(No Q. 126.)

XQ. 127. He told you the purposes of the Foundation?

A. In a general way; yes, sir; and brought me some very interesting books to read.

XQ. 128. Brought you some books to read, but not the charter.

A. I can not recollect, Mr. Kresel, whether in these pamphlets there might have been the charter.

XQ. 129. He told, did he not, that The Chemical Foundation had been organized with the assistance and co-operation of the chemical industry?

A. Yes, I understood that, of course.

XQ. 130. He told you, did he not, that the reason for putting these patents in the hands of a corporation like The Chemical Foundation was, whether true or no, in order that they might not get back to the Germans?

A. Now, Mr. Kresel, I can not swear to these exact words.

XQ. 131. Of course not; substantially that?

A. I know the general outline and I had no hesitancy in saying a while ago that I gave my acquiescense.

XQ. 132. He told you substantially that any way, did he not? I am not asking you to repeat the exact words. Of course, you can not.

A. Yes, I would know that as I got into the matter.

XQ. 133. He told you, did he not, that The Chemical Foundation was issuing non-exclusive licenses?

A. Well, I do not know whether he told me, but I knew it.

XQ. 134. He told you, did he not, that the stockholders of The Chemical Foundation could in no event get more than 6 per cent return on their stock?

A. I do not know whether he told me that or not, but that is a well understood statement.

XQ. 135. Did he not tell you that The Chemical Foundation was issuing licenses to all American citizens at the same rates, at equal rates?

A. I knew that.

XQ. 136. Did he not tell you or did you not know at that time that all earnings of The Chemical Foundation over and above the 6 per cent return on the stock were to be used for the advancement of chemical science in the country?

A. I naturally knew that.

XQ. 137. You knew, did you not, that Mr. Choate, who had been active in the work of the Alien Property Custodian's office during the war, was general counsel of The Chemical Foundation?

A. No, I had not had the pleasure of knowing Mr. Choate up to this time we are discussing.

XQ. 138. I did not ask you whether you knew him personally.

A. No, I would say his name had not impressed itself on me at that time.

XQ. 139. Then you did not know that fact on the 31st of March?

A. No, I do not think I did.

XQ. 140. How soon after that did you learn that?

A. I really do not know.

XQ. 141. It was very shortly thereafter?

A. I must have known that he was the counsel, but I do not know the exact date.

XQ. 142. I mean at the time you were elected director, for instance, you certainly knew that?

A. I might very well have known it.

XQ. 143. Yes. All right.

A. On the other hand, I won't swear that I did.

XQ 144. Did you know that Mr. Hoguet, who had been patent attorney during the war for the Alien

Property Custodian, was patent attorney of The Chemical Foundation?

A. Well, my same answer with regard to Mr. Choate would apply to Mr. Hoguet.

XQ. 145. You think that, but not on the 31st of March?

A. If you want me to swear to it, I will say no, I do not think I did.

XQ. 146. Can you tell me when you learned that fact?

A. No, I can not give the approximate date.

XQ. 147. Was it shortly after you became Alien Property Custodian?

A. Naturally, the name Hoguet came to my attention in my dealings with The Chemical Foundation. I do not know whether I have ever had the pleasure of meeting him or not.

XQ. 148. You verified this Bill of Complaint, did you not?

A. Yes, sir

XQ. 149. You are an attorney, though you are not practising law, and when I speak of verifying the Complaint you know what I mean?

A. Yes.

XQ. 150. That is, you swore to this affidavit that is attached to the Complaint?

A. Yes, upon advice of counsel.

XQ. 151. What is that?

A. Upon advice of counsel, which in this instance is the Department of Justice.

XQ. 152. I see. I will come to that in just a minute. Before you verified this Complaint you received a letter from the President, did you not?

A. Yes, sir

XQ. 153. And that was on or about July 1, 1922?

A. Yes, sir.

XQ. 154. You have seen the copy of the letter

which is attached to the Bill of Complaint, and there is no doubt that that is a correct copy?

A. Yes, sir; I have the original with me.

XQ. 155. Did you before bringing this suit make a demand upon The Chemical Foundation in accordance with the instructions contained in the President's letter to you?

A. I followed the instructions of the President.

XQ. 156. You did?

A. Through the—

XQ. 157. Well, you did. You made the demand, did you not?

A. I made the demand, yes.

XQ. 158. And The Chemical Foundation declined to comply with it?

A. Yes, sir.

XQ. 159. Do you remember when you made that demand?

A. One minute, I will give you the exact date.

XQ. 160. Well, it was July 8, 1922, and if my date is wrong you may correct me later.

A. All right.

MR. KRESEL: He won't stop to do that now.

MR. GALLOWAY: July 8th is right.

MR. KRESEL: July 8, 1922.

XQ. 161. You verified this Complaint on the blank day of September, 1922—I have it in my Bill. It was filed September 8, 1922, and, subject to correction, Colonel Miller, please assume that.

A. Yes, sir.

XQ. 162. Now reading to you from the letter of the President to you, the President says, after describing what the transaction had been:

"On the face of such an action it became so apparent to me that an inquiry should be made."—will you follow me, please?

A. Yes, I am (examining book).

XQ. 163. (continuing) —"that I asked for a report by the Department of Justice on the sale of this enemy property to The Chemical Foundation. It appears that the sale was made at so nearly a nominal sum that there is reason to believe that this Government has not faithfully observed the trust which was implied in the seizure of this property. The circumstances relating to the entire transaction are of such a character that full investigation becomes a public duty." Prior to your making the demand on The Chemical Foundation what investigation did you make regarding this transaction? When I say "you" I mean in your official capacity, of course.

A. I can not say, Mr. Kresel, that The Chemical Foundation was the subject of any particular investigation by me personally or by my office.

XQ. 164. That answers my question. Who did make an investigation, to your knowledge?

A. I can not answer that, outside of my own department.

XQ. 165. Then you do not know?

A. I do not know, Mr. Kresel, that—I do not believe that The Chemical Foundation Trust was the subject of any particular investigation by my office.

XQ. 166. Then you do not know that anybody made an investigation of this transaction between the Alien Property Custodian and The Chemical Foundation; is that your answer?

A. That is, not to my knowledge; but that would not mean that it had not occurred.

XQ. 167. That is all I am asking—to your knowledge. Do you know a man named C. C. Bennett?

A. No, I don't.

XQ. 168. Have you ever met Gaston B. Means?

A. I have met him occasionally, yes.

XQ. 169. He was brought to your office along

about the time when this suit was brought, was he not?

A. No, sir.

XQ. 170. Or was it prior thereto?

A. I can give you—

XQ. 171. No.

A. I want to give you the date now that I knew him first.

XQ. 172. Yes, please.

A. In October, 1921, I think I first saw this man.

XQ. 173. October, 1921?

A. Yes.

XQ. 174. That was after you had become Alien Property Custodian?

A. Yes, sir.

XQ. 175. He was brought to your office?

A. He came there as an agent from the Department of Justice for some information which I—

XQ. 176. And was or was not that information in connection with The Chemical Foundation?

A. I must answer it this way: It was either The Chemical Foundation or the Bosch Magneto.

XQ. 177. Well, do you not know it was with reference to both?

A. When I swear to something, I want to be specific.

XQ. 178. Of course you do, Colonel.

A. But this man has talked to me in his official capacity as an agent of the Department of Justice about both those matters and I do not know which one came first. It was the first time I had met him.

XQ. 179. But he has in his official capacity as a representative of the Department of Justice talked to you at one time or another before the bringing of this suit with reference to the Alien Property Custodian and The Chemical Foundation?

A. And may I say there —

XQ. 180. Just say yes or no and then we will see whether you may say something more.

A. Yes.

XQ. 181. Before you received the President's letter on the first of July had you been consulted about it?

A. I had not been directly consulted.

XQ. 182. That is all. You did not know that the President was about to issue any such communication?

A. Do you mean on the 1st of July?

XQ. 183. Before the receipt of the letter?

A. Well, no, I did not know that the letter would arrive that day.

XQ. 184. Then you missed my point? Whether you knew that it would arrive that day or no, my question is did you know that the President was about to send you a communication of that sort?

A. No, I did not.

XQ. 185. Were you consulted about bringing this suit prior to the time that you were asked to verify the Bill of Complaint?

A. I was consulted about the advisability of taking some action, but not within the few days previous to July 1, 1922.

XQ. 106. I think you misunderstand me, Colonel. This suit was not instituted until the 8th of September, 1923.

A. Oh, I see.

XQ. 187. My question is whether prior to the date when you verified this Bill of Complaint you had been consulted about the bringing of this suit?

A. Well, my office, Mr. Kresel?

XQ. 188. No, I mean you.

A. Me personally?

XQ. 189. Yes.

A. Yes, I had been called to the Attorney General's office, I remember, for one conference after the

demand had been refused by The Chemical Foundation.

XQ. 190. That is, after July 8th?

A. Yes, sir.

XQ. 191. And can you give me the date when you were called to the Attorney General's office?

A. It must have been some time between July 8th, and say, the middle of August. I can not give you the date. I know if I had my—

XQ. 192. Between July 8th and the middle of August?

A. I could give it if I had my memorandum.

XQ. 193. That is near enough. Of 1922?

A. Yes, sir.

XQ. 194. I am not going to ask you for any conversations; I am simply going to ask you to whom you talked there.

A. In conference, you mean?

XQ. 195. Yes.

A. The Attorney General of the United States, Colonel Henry W. Anderson, Special Assistant, Mr. Galloway, W. W. Wilson, and I don't want to miss any others, but there may have been some there.

XQ. 196. Mr. Wilson, whom you have just mentioned, is your present general counsel?

A. Yes, sir.

XQ. 197. That is, the general counsel of the Alien Property Custodian's office?

A. Yes, sir.

XQ. 198. At the time when this conference was had, did you know a suit was going to be brought against The Chemical Foundation?

A. Well, I had reason to know, Mr. Kresel—

XQ. 199. Well, did you or did you not?

A. Well, my natural assumption is after the President's letter that an action would be brought upon the refusal of the demand.

XQ. 200. Colonel, I do not want to fence with you about it.

A. If it will save time, I will say yes, then.

XQ. 200-a. That is all right, then. And did you know at that time—that is, at the time of this conference in the Attorney General's office that you would be asked to verify this Complaint?

A. Well, I presume that I would have something to do with it.

XQ. 201. I do not want you to presume.

A. No, I did not know I would have to sign it.

XQ. 201a. Is it not a fact, Colonel Miller, that not until the day when the bill was presented to you for signature, did you know that you would be asked to verify it?

A. I will answer in the affirmative.

XQ. 202. I knew you would. That is why I asked you. Now, when you verified this bill, of course you did not read it?

A. I read it. Yes, I read it, naturally.

XQ. 203. Of course, you would. You would not sign and swear to this sort of document without reading it. You remember the form of the verification, do you not?

A. Yes.

XQ. 204. You swear here that you have "read the foregoing Bill of Complaint and that the matters and things therein stated of which the defendant has knowledge are true and that the matters and things therein stated upon information and belief he believes to be true."

A. But may I say there, as you know, the Department of Justice is the counsel for my office.

XQ. 205. Oh, yes, I know that.

A. And you know the system in preparing suits or answers to suits.

XQ. 206. I do not know and I think my knowledge

of it is entirely immaterial. When you read the Bill, it was already printed the way it now appears, was it not?

A. Yes, I saw the copy in the printer's dummy.

XQ. 207. Did you suggest or make any corrections therein before verifying it?

A. No.

XQ. 208. Have you a copy of this Bill before you? If not I will let you have one.

A. The Judge has given me one.

XQ. 209. I direct your attention to page 15 of the Bill, the fifteenth paragraph. You say as follows:

> "In the administration of said 'Trading with the Enemy Act' as amended by the Act approved March 28, 1918, aforesaid, it was determined by the Alien Property Custodian and others charged with the administration thereof under his direction and by the Attorney General of the United States, that said 'Trading with the Enemy Act,' as amended, did not authorize the seizure and sequestration or sale or other disposition of enemy-owned patents, copyrights, trade-marks, labels, and similar rights or applications therefor, or contracts with respect thereto, mentioned in the Ninth Paragraph hereof."

In the first place, I direct your attention to the fact that you are making that allegation not upon information and belief, but upon knowledge. You notice that, do you not?

A. Yes.

XQ. 210. Will you please tell me how you knew that the Alien Property Custodian and others charged with the administration of his office had held the view, as you say, and had determined that the Trading with the Enemy Act did not authorize the seizure of patents?

A. Well, I recall the debates leading up to the so-called patent amendment which was not put into

the alien property act, I think, until down in October or November, 1918.

XQ. 211. What debates; where?

A. Either debates in Congress or hearings before Congressional committees. I generally understood—

XQ. 212. Wait a minute. Let us get through with one thing at a time.

A. Good.

XQ. 213. What committees were there any debates before upon this question?

A. I do not know the specific names of the committees.

XQ. 214. Which Congress was it that you heard debates in with reference to this question?

A. I was not able to hear debates in that Congress. I was in France then.

XQ. 215. Then I want to know—I will repeat my original question—I want to know what knowledge you had that the Alien Property Custodian and others charged with the administration of the act had determined that under the act as it stood, with the amendment of March 28, 1918, the seizure of patents was not authorized?

A. Well, I knew, Mr. Kresel, that the so-called patent amendment had not been put into the alien property act until the Fall of 1918, which would enable patents and trade-marks to be sold the same as other alien property was sold.

XQ. 216. Colonel, I quite understand that, but you are missing my question.

A. I do not want to.

XQ. 217. Of course, you don't. I did not intimate that you do. I want to repeat the question. What fact was it that you had, which enabled you to state positively, and not upon information and belief, that the Alien Property Custodian and others charged with

the administration of this act had determined that the act did not permit the seizure of patents?

A. Only my general information with regard to legislation.

XQ. 218. That is, all you knew about it was that it was not until the Fall of 1918 that a specific amendment authorizing the seizure of the patents was passed, is that it?

A. Yes; and I of course had access to my records, where they were hearings that my predecessors had taken part in. I can not specifically say, Mr. Kresel, when and how I learned it; but I knew that an amendment was necessary to permit the sale of patents.

XQ. 219. What records did you see before you verified this Bill?

A. I am unable to answer specifically what records.

XQ. 220. Were there any records that you saw from which you learned that the Alien Property Custodian had so determined? And if so, what are the records?

A. I am unable at this time to answer that in detail such as you request.

XQ. 221. You say that the Alien Property Custodian and others charged with the administration of the act had so determined. Who were the others?

A. I presume his—

XQ. 222. Not what you presume, Colonel. Please let us not presume.

A. Well, the others were undoubtedly his Bureau chiefs under him.

XQ. 223. Who were they?

A. I do not know the exact persons.

XQ. 224. Did you know when you verified the Bill?

A. I did not know the names of the personnel, no.

XQ. 225. I direct your attention to Paragraph 16th of the Bill, on Page 17. Before that allegation

the Bill sets forth that Mr. Bradley, representing the Alien Property Custodian, had appeared before a Congressional Committee and had given certain testimony. You are familiar with that?

A. Yes.

XQ. 226. In the sixteenth paragraph you say this:

> "Acting upon the faith of the representations aforesaid and solely for the purposes aforesaid, Congress did, by an Act entitled 'An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and prior fiscal years on account of war expenses and for other purposes,' approved November fourth, 1918, amend sub-section (c) of section 7," and so on.

How did you know so that you could swear upon knowledge, that acting upon the faith of the representations made by Mr. Bradley and solely upon that Congress passed that amendment?

A. Well, Congressional committees undoubtedly—Congressional committees follow the recommendations of the Division or Bureau Chief or his subordinates involved when legislation is before them affecting those offices.

XQ. 227. Is that all you want to say about that?

A. Yes. I am giving it to you as I understand it.

XQ. 228. Well, do you think or did you know that every Congressman that voted for that amendment did so relying solely upon what Mr. Bradley had said to the committee?

A. No, I did not know that.

XQ. 229. When this was presented to you, you could not have failed to observe that statement. Did you ask any question about that to satisfy yourself whether that was true?

A. No, not that I recollect.

XQ. 230. I direct your attention to page nineteen of the Bill, Paragraph Eighteenth:

"Complainant is informed and believes"

Now, you see here you are stating this upon information and belief.

> "and therefore avers that for several years prior to the declarations of war aforesaid various persons, firms, and corporations engaged in the production, manufacture, and sale of dyes, and the ingredients thereof, and of kindred or similar chemical materials and products, had been engaged in the formation and development of plans for the complete monopolization and control of the dyestuffs and organic chemical industry in the United States."

First, I want you to tell me who were the persons, firms and corporations that had thus been engaged in the formation and development of plans for the monopolization of the dyestuffs industry?

A. I can not give all the names that have been brought to my attention. Therefore, I do not care to name any of them.

XQ. 231. Did you know that you verified in this Bill the names of the various persons, firms and corporations engaged in that monopoly?

A. I can't say, Mr. Kresel, that I could recite them. I know that—

XQ. 232. Did you know who they were?

A. Well, answering generally, no.

XQ. 233. Of course, if you had known, you would have insisted upon putting in the names, would you not?

A. I do not know whether I would or not, Mr. Kresel.

XQ. 234. You realize that that would have been the proper thing to do, don't you?

A. Well, in—

XQ. 234. (Continued) And that is the reason why you hesitate to mention even any names?

A. Any advice as to how this Bill should be drawn had better be given to the Department of Justice. They drew it.

XQ. 235. Who to your knowledge had a complete monopolization and control of the dyestuffs and organic chemical industry in the United States, as you allege here?

MR. ANDERSON: I beg your pardon. I know counsel does not wish to misstate the allegations; but he does not state on his knowledge; he states on information and belief.

MR. KRESEL: I withdraw the question.

XQ. 236. What information did you have as to the persons who had a complete monopolization and control of the dyestuffs and organic chemical industry?

A. The only information that I had personally—

XQ. 237. Not what you have now, what you had when you verified the Bill.

A. No, had then.

XQ. 237. (Continued) Yes.

A.—had come from my interest and association personally with those who were interested in a dye embargo.

XQ. 238. That does not give me the answer. Who were they?

A. I said, Mr. Kresel, I could not commence to name all these corporations. Therefore, I do not—will not single one out or two out to talk about them.

XQ. 239. And you said you did not know at the time. You want to stand by that answer, don't you?

A. That I did not know any of their names?

XQ. 240. Yes.

A. Oh, I certainly knew the names of some of the chemical corporations.

XQ. 241. I am not asking you what you know about them.

A. Well, I knew them. I could not have been associated in a personal capacity, as I was at Washington without knowing.

XQ. 242. Colonel, I did not ask you that. You are missing my question. I ask you whether, when you verified this Bill, you knew the names of the persons, firms and corporations who were engaged in the production, manufacture and sale of dyes and who had been engaged in the formation and development of plans for the monopolization of that industry?

A. No, I did not know them in their entirety.

XQ. 243. I will have to ask you then, Colonel, though you seem to hesitate to give them, to tell me such names as you did know?

A. Well, I will tell you, Mr. Kresel, I would prefer not to name any individual corporations. If I have not satisfied you with my answers—it is not because I care to evade anything.

XQ. 244. I know, Colonel, and please do not think that I am intimating in the slightest degree that you are evading anything.

A. You know—

XQ. 245. I know that.

A. You know very well that I know a good many sides of this question.

XQ. 246. No, I do not.

A. I thought I—

XQ. 247. I plead complete ignorance.

A. Well then, we do not know each other as well as I thought we did.

XQ. 248. But that is neither here nor there. My question is this: Did you or did you not, when you verified this Bill of Complaint, know who were the various persons, firms and corporations that had been

engaged in monopolizing the dyestuffs industry of the country?

A. Now, how is this? Not specifically.

XQ. 249. My question stands as I put it.

A. Well then, let it go in as "No."

XQ. 250. "No," that is an answer. Now I direct your attention to page 23 of the Bill, Paragraph Twenty-Third. You say as follows:

> "Complainant is informed and believes and therefore avers that in pursuance of said plan, scheme, and conspiracy the persons, firms, corporations, and associations aforesaid, parties thereto, about or soon after June, 1918, through their duly authorized representatives, and especially through one Morris R. Poucher, representing and acting for said conspirators," etc.

You have named Morris R. Poucher. I want to know who the other duly authorized representatives are that you speak of in that paragraph?

A. I can not give them to you, Mr. Kresel.

XQ. 251. Did you know who they were at the time when you signed and verified this Bill?

A. No, sir.

XQ. 252. I direct your attention to Paragraph Twenty-Fourth of your Bill, page 25: You say, first sentence at the top of page 25:

> "Said parties thereupon arranged with the Alien Property Custodian immediately following the enactment of said amendment approved November 4, 1918, of the 'Trading with the Enemy Act' that a patent attorney who was then engaged by and represented the E. I. duPont de Nemours & Co. and another patent attorney who was then engaged by and represented the National Aniline and Chemical Company, together with the necessary assistants who were employed by the said two corporations." and so on.

Now I want to know who were the parties that thereupon arranged with the Alien Property Custodian, as you say there, to do the things that you say?

A. I do not know who they were.

XQ. 253. Did you know at the time when you verified this Bill?

A. I knew from the advice given to me by the Department of Justice officials who prepared this Bill, that they had discovered evidence in the files which would substantiate them in putting this in the Bill.

MR. KRESEL: I ask that that answer be stricken out, your Honor, as not responsive.

THE COURT: Motion granted.

XQ. 254. Did you know who were the parties that made this arrangement that you specify here in the Bill?

A. No, sir.

XQ. 255. Did you know at the time when you verified the Bill?

A. Same answer.

XQ. 256. "No, sir," all right. I direct your attention to page 27 of the Bill. In the Twenty-Fifth paragraph thereof you say as follows:

> "Further carrying out and in pursuance of said scheme or conspiracy, the persons, firms, corporations, and associations aforesaid, acting through their common representative or representatives as aforesaid, procured and induced the said Francis P. Garvan,"

And so on, to do certain things. Now, you have already testified that you did not know who the persons, firms, corporations and associations were. I now ask you to say whether when you signed and verified this Bill, you knew who the common representative or representatives were that you speak of there?

A. No, sir.

XQ. 257. Now I turn to page 29 of the Bill, twenty-eighth paragraph, where you say:

> "In the further carrying out of said scheme or conspiracy, the parties aforesaid engaged in the organization of said defendant corporation for the purposes aforesaid and in order to prevent and avoid any competitive bidding for said patents and other rights when sold, undertook to induce, and did in fact induce substantially all of the persons, firms, and corporations engaged in said dyestuffs and chemical industry who might become bidders for said patents, copyrights,"

and so on, to do certain things. I want to know who were all of the persons, firms and corporations, substantially all as you say, who were in the dyestuffs and chemical industry.

A. I can not name them.

XQ. 258. Did you know at the time when you verified the Bill?

A. Not in detail, no.

XQ. 259. Did you know any of them?

A. I can not give their names Mr. Kresel.

XQ. 260. Please turn to page 39 of the Bill, paragraph Thirty-Four. I want you to follow me closely on this, if you will:

> "Complainant is informed, believes, and therefore avers that said orders of said Frank L. Polk—" you know what orders are being spoken of there?

A. Yes.

> XQ. 261. "—were in fact prepared by or at the instance of the said defendant, The Chemical Foundation, Incorporated, and at the instance and procurement of the persons, firms, and corporations in control of said dyestuffs and chemical industry, in pursuance of the scheme and con-

spiracy as hereinbefore set forth; that necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of said patents and other rights mentioned in said orders at private sale were not stated or disclosed to said Frank L. Polk, but were withheld from him and suppressed."

What facts with regard to the seizure and proposed and pretended sale and disposition of this property did you know when you verified this Bill had not been stated or disclosed to Frank L. Polk or had been withheld from him and suppressed?

A. The evidence as collected by the Department of Justice officials and brought to me in the Bill was the only information that I had.

XQ. 262. Colonel, that does not answer my question, if you will permit me to say so. I want to know what facts you knew of and had been informed of which had been suppressed and withheld from Mr. Polk.

THE COURT: I understood the witness in his answer to say that the only information he had on that matter was what was disclosed by the Bill and the exhibits which were presented to him for execution. Does that not answer your question?

XQ. 263. Was that your answer?

A. Yes, that is just as I said it.

XQ. 264. You go on and say:

"that other facts in connection therewith, and mission, charged with issuing licenses under the especially the attitude of the Federal Trade Comenemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk."

What facts did you know, when you verified this Bill, had been misstated and misrepresented to Mr. Polk?

A. The same answer that I gave to the previous question.

XQ. 264. Colonel, that does not satisfy me on this point. You are making a serious charge here. You are making a charge that somebody, whom you have not named yet, had made a deliberate misrepresentation and had deliberately misstated facts to Mr. Polk. Surely, before you verified this Bill, you must have asked what there was upon which to adduce such a statement. Now please tell me what it was?

A. I can not give you anything on that point in answer to your question. But you must know—and I do not know whether you will strike it out of the answer or not,—the way—

XQ. 265. Pardon me a minute.

MR. KRESEL: I move to have stricken out from the answer the statement beginning with the words "but you must know." He answers that he can not give the information. That satisfies me.

A. And does the previous answer stay in there, that I desire to give the same answer to the previous question?

XQ. 266. Oh, yes; you have already given it.

A. All right.

XQ. 267. You say, "that his signature," speaking of Mr. Polk,

> "to said order and the issuance thereof by him were procured as aforesaid through such suppression and misrepresentation of the facts, which, if the same had been known by said Frank L. Polk, would have prevented his signing and issuing said orders."

Did you ever talk to Mr. Frank L. Polk upon this subject?

A. Not about this subject.

XQ. 268. Did you, when you signed and verified this Bill, know that if he had known certain facts, that you now can not tell me what they were, he would not have signed this order?

A. I was led to believe so by my counsel, the agents of the Department of Justice, who had interviewed Mr. Polk.

XQ. 269. And now that your recollection is refreshed, what is it that you were told by your counsel, the Department of Justice, had been misrepresented to Mr. Polk?

A. My recollection is not refreshed. The Department of Justice, as I have said all along through my answers, were my counsel and my agent in these matters; and they interviewed Mr. Polk and they brought this testimony, they brought in facts which they put in this Bill, which I signed.

XQ. 270. Well, what was it that they told you they had learned from Mr. Polk indicating that things had been misrepresented to him?

A. Specifically I can not answer that, Mr. Kresel.

XQ. 271. I wish you to turn now to paragraph Thirty-fifth of the Bill wherein you say at page 40 that you were informed and believe, and therefore aver that the Executive Order (this is the Executive Order which was signed by the President) "was prepared by or at the instance or procurement" of the defendant, The Chemical Foundation, Incorporated, and "at the instance or procurement of said persons, firms, and corporations in control of said dyestuffs and chemical industry and parties to said scheme or conspiracy hereinbefore set forth; that the facts hereinbefore set forth and other facts necessary and essential in relation to said seizure and proposed and pretended sale of said patents, copyrights, and other rights, and

rights arising out of or incident thereto, (and I skip the next sentence because it has been amended) were not disclosed to the President at the time of or before the signing of said Executive Order and that the same was signed and issued upon an entire misunderstanding or mistake of facts."

Now, surely, when you were signing this Bill, you realized the importance of that allegation did you not?

A. I can not say that I did above any others.

XQ. 272. Didn't you know when you were verifying this Bill that you were alleging that the President of the United States had made an Executive Order and that he did not know the facts upon which he was acting?

A. If you want to read that into the language, it is your privilege.

XQ. 273. Well, isn't that the language? Don't you so read it?

A. I have no comment to make on that.

XQ. 274. With that language before you, you surely realize the importance of it; and now I ask you to state what you knew, what facts there were that had not been disclosed to the President at the time of the signing of this order?

A. No facts other than what my agents, the Department of Justice, had brought into this bill or to this case.

XQ. 275. But what were they?

A. I can not discuss them, Mr. Kresel, because I am not familiar with them at this time.

XQ. 274. Did you know them when you signed the Bill?

A. Only in a general way, as I have indicated to you, when I signed the Bill.

XQ. 275. The fact is, Colonel, that this Bill was presented to you by the Department of Justice, you

were asked to sign it; you relied upon the Department of Justice as your counsel who told you it was all right; and you signed it; isn't that so?

A. That is what I have said all along substantially; and, acting upon the original letter of the President, who is my chief.

XQ. 276. You make a charge in this Bill of conspiracy and monopoly. Do you want to add anything to what you have already testified which in your belief, knowledge or imagination even will go to substantiate the charge of conspiracy or monopoly?

A. I have no other evidence to offer than what the Department of Justice offers.

XQ. 277. Who was it that presented this Bill to you from the Department of Justice?

A. Either Colonel Henry W. Anderson or Herman J. Galloway.

XQ. 278. You testified before a Committee of Congress called the Winslow Committee, do you remember?

A. Yes, sir.

XQ. 279. That was in 1922?

A. Well, it ran over.

XQ. 280. When was it?

A. In December, 1922 and January, 1923.

MR. ANDERSON: If your Honor please, I do not wish to interrupt the cross-examination of this witness, but I only want to say that when taking him outside of the cross-examination, counsel makes him his own witness. I have no objection on any other grounds.

XQ. 281. Colonel, I understand you want to get away early this morning?

A. Yes, sir.

XQ. 282. I want to be as obliging as I can. If it is important for you to catch your train, I will stop

now, though I am not through with you and I doubt whether I can get through with you in less than a half hour. I will do anything the Court and counsel desire me to do about it.

A. Unfortunately, Mr. Kresel, it is absolutely mandatory for me to catch a train in thirty-five minutes. I am very loath to leave at this present moment, but I suggest, if you care to, that you go ahead with me until I really have to leave.

XQ. 283. I will do anything that you want?

A. Thank you.

XQ. 284. Will you indicate to me when you desire to leave and I will stop instantly?

A. Thank you for your courtesy.

XQ. 285. Before this Committee, the Committee on Interstate and Foreign Commerce of the House of Representatives, Sixty-seventh Congress, Fourth Session on H. R. 13,496, supplemental to the Trading with the Enemy Act, you appeared as a witness on the 21st day of December, 1922, according to this record?

XQ. 285. (Continued) At page 32, speaking of the capacity in which you consider yourself to be as Alien Property Custodian, you said:

> "I merely am a stakeholder, and last June, previous to July 2, 1922, as trustee for the enemy, I brought a great number of suits," etc.

The point I wanted to direct your attention to is that you testify that you were trustee for the enemy; that is correct, is it not?

A. No.

MR. ANDERSON: Just a minute now. If your Honor please, I think I will note an objection to that question on the ground that it asks for the construction of the act. Otherwise I do not object to it, but I think the question as to what the wit-

ness may have thought is immaterial. It is merely a question of what his position was.

THE COURT: I am inclined to think I will not take time to hear discussion now.

MR. ANDERSON: No, I did not mean to enter into any.

THE COURT: We will not discuss it at this time, whether the objection is well taken or not, but at some later stage.

THE WITNESS: I would like to answer the question if I am not prevented from so doing.

XQ. 286. No, sir; you have answered the question I have asked you, whether you so testified, and you said you did, did you not?

A. You want no elaboration?

XQ. 287. No, but you did so testify?

A. Can't a witness have some—

THE COURT: No, Colonel, you are consuming time. Your counsel may bring it out on re-direct if necessary.

THE WITNSS: Because I am the author of that Act.

XQ. 288. Pardon me?

A. I am proud of the fact that I am the author of that Act. That is, I had a good deal to do with drawing it up.

XQ. 289. I do not know what act you are referring to, but please do not let us go into that.

A. All right. The one on the third page there, that you just referred to.

XQ. 290. As long as you insist on that I will let you do it. You are speaking now of the Winslow Bill?

A. Yes, sir.

XQ. 291. You mean the bill that was passed by Congress authorizing the Alien Property Custodian to

return to the Germans all property that you as Alien Property Custodian held up to the sum of $10,000?

A. Yes, sir.

MR. ANDERSON: I do not admit that construction of the Winslow Bill. I think while you can identify the bill or the witness may say if he wishes that he was the author of it, the meaning of the bill should not be put upon the record by counsel. I therefore object to that question.

THE WITNESS: Could I, then, say this to Mr. Kresel—

XQ. 292. No, we will get along, Colonel, if you will be the witness and let me be the lawyer. Whatever the construction of the act is, and I am not asking you to construe it, that is the act you say you were the author of?

A. Well, I was stating it a little strongly I recommend it, and for very good reasons, having an interest in the American claims against the Germans. I want that to go on the record, because if you read the testimony you will see what I said in there. I am unwilling to have it go in just briefly on the one or two points you want to bring out.

XQ. 293. Colonel, you say that is the bill you recommended. We will take it that way.

A. Yes.

XQ. 294. And as long as you have insisted upon having that in the record, I am sure you will say, because you so testified before the committee, that that bill was an administration measure, will you not?

MR. ANDERSON: What is that?

XQ. 395. Wasn't it?

MR. ANDERSON: If your Honor please, I do not think that is a proper question here and I do not think it is one we should go into.

MR. KRESEL: I am not going into it, but your

Honor sees that he insisted on having it in the record.

MR. ANDERSON: An Act of Congress is simply an Act of Congress; it is not an administration act or anything else.

THE COURT: Colonel, do I recall correctly that part of your Bill in which you allege that Congress passed an act upon representations made to it solely for that purpose by Mr. Bradley?

MR. ANDERSON: Yes, sir.

THE COURT: How can you reconcile your present objection with that allegation?

MR. ANDERSON: In this way—that if counsel wish to have this witness say that he recommended the thing or that he was the only witness who appeared, I have not the slightest objection; but what was an administration measure is a conclusion, and the administration consists of the entire Executive part of the Government, and therefore I have never averred and would not aver that the thing was an administration measure.

THE COURT: And therefore that calls for a conclusion of fact?

MR. ANDERSON: It calls for a conclusion, and in addition to that calls for the action of the entire Executive Department. Any specific act of a specific person is a fact.

THE COURT: There can be such a thing, I take it, as an administrative measure, can there not, Colonel Anderson?

MR. ANDERSON: I am frank to confess, your Honor, that I do not know that I could conceive of that description in America. It would be in England, because there it is the act of Parlia-

ment. But here the only person who can speak for an administration, whatever you may call that, is the President, perhaps in his official communications to Congress; and therefore he, not being a member of Congress, could not state that. A bill is introduced by a Senator or Congressman and passed as an act of Congress. There might be some definite interpretation of that in England, but not in this country.

MR. KRESEL: This witness's time is short, your Honor, and all I am asking him is this:

XQ. 296. Did you not testify before this committee when you were urging the passing of this bill which you say you were recommending, that it was not only you that was urging it but that it was an administration.

A. Yes, sir.

XQ. 297. Surely you are not ashamed of that, are you?

A. I am certainly not ashamed of it.

XQ. 298. Then I will come back to my original question. And at page 33 of your testimony before this committee you said, did you not: "Why, as trustee for the aliens, I want, of course, to see all their rights preserved"?

A. I conceived that to be my duty, yes.

XQ. 299. That is all right, I am not quarreling with your duty, I just want to get on the record what you said. And at page 34 you said this: "I have already indicated to you my personal view as to the situation that might be existing in connection with the Government suit against the Chemical Foundation, but as I have said I am a trustee for these people and the guardian of their property." "These people" were the Germans?

A. Austrians and Hungarians, whose property

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was still in my possession. I wish you would read that portion which relates to the American claims, if you have time to do it.

XQ. 300. I do not know what portion you refer to, but I shall not object to Colonel Anderson reading in anything he wishes of what you said, because I realize absolutely you are truthful about it.

A. I think the Bill is a life saver for the American Claims situation.

XQ. 301. Yes, I quite understand that that is your belief. At page 74 before this committee you testified as follows: "Just at that point, Mr. Chairman, it might be interesting for me to say to the committee that as the common law trustee for the enemy interests in all this property I have, since I took over the office, contemplated bringing a friendly action in the courts, as trustee for these people, to determine whether the compensation of $100,000 and other considerations paid for these patents, was really a sufficient sum of money, but due to the whole patent situation I have not done so. To my mind it would be found that the compensation paid at the time was inadequate."

MR. ANDERSON: Would you mind saying to what patents that refers?

MR. KRESEL: Yes, I am coming to that.

XQ. 301. (Continued) There you were referring to the fifty-seven hundred odd patents that the Alien Property Custodian seized and conveyed to the War and Navy Departments, or as to which he gave a free license to the War and Navy Departments, and released the Government from all claims for damages by reason of the infringement of those patents during the war upon the payment of $100,000 by the United States Government to the Alien Property Custodian?

MR. ANDERSON: If your Honor please, I am constrained to object to that question as an effort

to state the contents, meaning and intent of documents which are not in evidence in this case, and as to which the documents themselves are the best evidence. Any facts in connection with that matter which are deemed pertinent by the Court I should not object to, but I must respectfully urge an objection to the testimony as to documents, of that very far-reaching character, of which I personally or as counsel have no knowledge. I do not think he should undertake to state the legal effect, the number of patents, or what was done about them, without producing the record.

THE WITNESS: You do not want me to answer that?

MR. ANDERSON: No, not yet.

MR. KRESEL: No, because the Court has not ruled yet. If your Honor please, I am not asking the witness for the contents, I am simply asking him to identify the transaction.

THE COURT: I understand that you are not attempting to put a construction on the documents but merely use the language that you did to indicate the transaction referred to and identify it.

MR. KRESEL: Yes, sir, all I ask him is to identify it.

THE COURT: As I construe the question to mean that and that only, I will overrule the objection and let you discuss it at a later time.

MR. ANDERSON: And permit me to note an exception at this time.

THE COURT: Yes.

A. Those are my words, and it is bearing out my policy to keep this fund as large as possible as a guarantee against the final settlement of American claims against Germany. That was one of my actuating reasons.

MR. KRESEL: I ask that all the answer be stricken out except that portion of it wherein the witness says that was his language.

THE COURT: Strike out all of the answer after the words, "Those are my words."

XQ. 302. Colonel, all I am asking is whether what you were referring to there by that language is this patent transaction between the Alien Property Custodian and the War and Navy Departments?

A. Yes, sir.

XQ. 303. It had nothing to do with the Chemical Foundation patents?

A. No, sir.

MR. ANDERSON: I would like to get the record straight on that, because at some time this might become a question. I understand that counsel does not rely upon the statement upon the record or any answer of the witness in this matter as any evidence of the transaction between the War Department and the Alien Property Custodian, the assignment of the patents or the number of patents, or any matter of that kind. In other words, if that is relied upon as evidence, I respectfully ask that the best evidence be produced.

MR. KRESEL: The record, your Honor, will speak for itself. Whatever its effect is, the Court will give it that effect.

MR. ANDERSON: Perhaps I misunderstood the ruling.

THE COURT: I understand your position to be, Colonel Anderson, that if the purpose of the inquiry was other than to identify the subject matter of his statement, you object to it?

MR. ANDERSON: Very much, sir.

THE COURT: I do not understand that it is

offered to prove the fact, but only as identifying the subject matter of his statement before the committee.

MR. ANDERSON: I say any evidence of the transfer of patents or the consideration therefor, or any release of claims against the War Department or otherwise, any other matter relating to that which was in writing, we have to ask for the best evidence.

MR. KRESEL: Certainly. I will produce it in due time.

MR. ANDERSON: Very well.

MR. KRESEL: I will produce it.

XQ. 304. At page 15 of this record before the Winslow Committee you put into the record a statement which I shall show you, of the transfer of patents by the Alien Property Custodian to the United States, licenses issued on patents by the Custodian to the United States, re-transfers, etc., and now I will show it to you and ask you whether that is the statement, and whether that is correct (handing witness book)?

A. That is correct.

XQ. 305. Please read the first item there, if you will.

MR. ANDERSON: Will you let me see that before he answers?

MR. KRESEL: Yes, I will let Colonel Anderson see it first (handing counsel book).

MR. ANDERSON: As I have never seen those documents, though I do not wish to interrupt the examination at this point, I will object to the introduction of that evidence, which is merely an abstract of what was done by writing. I make that objection at this time so as to reserve the point and later on examination of the documents if I find that that is correct and that it does not re-

quire the production of the long documents, I will withdraw my objection.

MR. KRESEL: We can use it subject to correction. If this abstract which Colonel Miller put in evidence proves to be incorrect, of course we will correct the matter then.

MR. ANDERSON: Or incomplete.

MR. KRESEL: Or incomplete, certainly.

MR. ANDERSON: Therefore I object on that ground, with that understanding.

MR. KRESEL: The witness states that he prefers to go now, your Honor, and I am quite willing to suspend at this time.

THE COURT: Are both sides now through with the witness?

MR. KRESEL: I am not through with him, your Honor.

THE COURT: You want him to return?

MR. KRESEL: I do, sir.

MR. ANDERSON: I would not have put Colonel Miller on the stand except that we thought last night that both of us could get through with him. It may be that the Government will rest its case before he gets back and his further evidence is introduced, and therefore I would like to have the examination of Colonel Miller continued at this point and put into the record immediately following this. I do not know whether that could be done, but I do not want to have it appear in the defendant's case.

THE COURT: It may go in at this point.

MR. KRESEL: Will you be back Thursday, Colonel?

THE WITNESS: Yes, or on Friday—or Saturday, if you are sitting.

July 11, 1923.

THOMAS W. MILLER resumes the witness stand.

MR. KRESEL: Let the record show that the witness is being recalled for cross-examination which was interrupted by the witness's departure at a time when he was under examination.

CROSS-EXAMINATION (Continued).

By MR. KRESEL:

XQ. 306. Colonel Miller, the Treaty of Peace with Germany, about which you testified before the Winslow Committee—I am going to call it the Winslow Committee just as an abbreviation. It was the Committee on Interstate and Foreign Commerce of the House of Representatives—was made in July, 1921, was it not?

A. No, sir. My appearance, that I assume you refer to, was in June, 1921, before the House Committee on Foreign Affairs in connection with the then pending Knox-Porter Peace Resolution.

XQ. 307. No, I was not referring to that. I was referring to your appearance before the Winslow Committee.

A. The first appearance before the Winslow Committee was in December, 1922, and January, 1923.

XQ. 308. I am glad to have the dates, but what I was trying to get was the date of the Peace Treaty. That was July, 1921, was it not?

A. Yes, sir; July 2, 1921.

XQ. 309. Since that time have you as Alien Property Custodian sold any property?

A. Yes, sir.

XQ. 310. Are you now making sales of property?

A. Yes, sir.

XQ. 311. Speaking of this German Treaty, you testified before the Winslow Committee as follows:

A. Pardon me, what page, please?

XQ. 312. Page 17, toward the bottom of the page:

"Mr. Miller. My personal opinion is that the Government does not at this time favor the immediate return of all of it."

That referred to enemy property in your possession, did it not?

A. Yes, sir.

XQ. 313. "Because of the very provisions that your Congress put in the Knox-Porter Peace Resolution to which I have referred." That is what I have termed the Treaty of July 2, 1921, is that right?

A. Yes, sir.

XQ. 314. "That contains the last official instructions that any of us have had from Congress and Congress makes the laws, namely, that this shall be retained by the Government until such time as the former enemy government shall respectively have made suitable provision for the satisfaction of all claims against these Governments. That is the last instruction we have in any law on the subject." You so testified?

A. Yes, sir.

XQ. 315. And that was true?

A. Yes, sir.

XQ. 316. In other words, you as Alien Property Custodian regarded it as the last instruction of Congress contained in that peace resolution that the enemy property in your possession should be retained by the Government until such time as the former enemy governments shall respectively have made suitable provision for the satisfaction of all claims against those Governments?

A. That is the way I so understood the language in the peace resolution.

XQ. 317. And have you so governed your conduct as Alien Property Custodian as to be in compliance with that edict of Congress? In other words, let me put it concretely: Have you retained all enemy property in your possession as directed by Congress until Germany and Austria should make provisions for the satisfaction of claims against them?

A. Unless there was a provision of law which required me to return a piece of property for which a claim was made.

XQ. 318. With that exception you have retained all such property?

A. I have retained all of the property that could not be returned under the then existing law or the amendments to the law passed since the date of this hearing.

XQ. 319. But you do say that, notwithstanding the treaty as contained in the Knox-Porter Peace Resolution, you have been selling enemy property?

A. Yes, sir, because—

XQ. 320. "Yes, sir," is an answer.

A. All right.

XQ. 321. You testified before this same committee that you are trustee for the German owners of the property that was taken over by the Alien Property Custodian, did you not?

A. Yes, in substance that was it, Mr. Kresel.

XQ. 322. Not only in substance, but in language did you not so testify?

A. Any language I used in there I stand by; yes, sir.

XQ. 323. Very well, let me direct your attention to your language.

A. What page, please?

XQ. 324. Please turn first to page 29, to about the middle of the page. You said as follows: "The Alien Property Custodian today in all these industrial

plants and corporations that he is operating stands in the shoes of a stockholder. He has seized and is holding that stock as a common law trustee or guardian." You so testified, did you not?

A. Yes, sir.

XQ. 325. Now turn to page 32 of the same record, to about the middle of the page: "I merely am a stockholder, and last June, previous to July 2, 1922, as trustee for the enemy I brought a great number of suits," etc. You so testified?

A. Yes, sir.

XQ. 326. Now, turning to page 33 of the same record, about the middle of the page, again you say "Why, as a Trustee for the aliens, I want of course to see all their rights preserved." You so testified, did you not?

A. Yes, sir.

XQ. 327. And then turn to your testimony before the sub-committee of the Committee on the Judiciary, You testified there, did you not, on the same Bill, the Winslow Bill?

A. In the Senate.

XQ. 328. Yes.

A. Yes, sir.

XQ. 329. At page 63 of that record you testified as follows, at the bottom of the page, the testimony given January 11, speaking of the Alien Property Custodian, "He also may administer this property as a common law trustee." Senator Cummings puts this question to you:

"A Trustee for whom?

"Mr. Miller. For the former enemy-owners." You so testified, did you not?

A. Yes, sir, if it is there.

XQ. 330. And then again at page 64 of this same record, Senator Cummings again puts the question to you:

"A trustee for the former enemy-owners."

"Mr. Miller. Yes, sir."

You so testified did you not?

A. Yes, sir.

XQ. 331. And when you verified this Bill of Complaint in the action of the United States against the Chemical Foundation, you were then a trustee for the enemy owners of this property, were you not?

A. I was a trustee, Mr. Kresel, as I construe it, under Section 12 of the Trading with the Enemy Act, which uses that very term that you have been referring to.

XQ. 332. Colonel, just listen to my question. When you signed and verified the Bill of Complaint in this action, you were then Trustee for the alien enemy owners of property in your possession, were you not?

MR. ANDERSON: One moment please. If your Honor please, I do not want to object to the examination, but I recognize that counsel can ask the witness what he understood, perhaps, of his position; but he testified about his position and it may have a bearing; but I respectfully suggest that the question of what was the position of the Alien Property Custodian under the law, is a question of law. What the witness may have understood, may or may not be evidence in that connection, and whether it is or not I am going to object to his saying, but whatever he understood his position—that was a position fixed by Statute and that alone can be determined by the Court, not what he thought.

MR. KRESEL: There is no doubt about the principle that Colonel Anderson is invoking.

MR. ANDERSON: Then the question is improper.

MR. KRESEL: Not at all. The question is not at all improper. On the contrary, the question is entirely proper.

XQ. 333. Colonel Miller, you understand that I am asking you to state whether on the day when you verified this bill of complaint you considered yourself as trustee for the enemy owners of this property? Did you or did you not?

THE COURT: The question being modified accordingly?

MR. KRESEL: Yes, sir.

A. If you want me to limit my answer, Mr. Kresel, to just a mere yes or no, I think it is due me that I have some opportunity to go at length into how I construed my position.

XQ. 334. Colonel, you will have every opportunity upon the re-direct examination, I am sure, to make your explanation. I should like you, if you can, to answer the question yes or no.

MR. ANDERSON: I wish to direct the Court's attention to the fact that while counsel can ask for a yes or no answer, the witness has a right to explain what he means by "yes" or "no," if it is necessary to make his answer complete, I think, even on cross-examination. I submit that for the decision of the Court.

MR. KRESEL: I do not think that the answer requires any explanation. He either did or did not consider himself to be a trustee for the enemy. I am perfectly willing to have him say one or the other.

THE COURT: If either an affirmative or negative answer can not be given unqualifiedly, the witness may state the qualification to such affirmative or negative answer; not his reasons and not his reasoning, but the modification or qualification of the answer that he may give.

XQ. 335. You understand, Colonel, the Court's ruling?

A. Yes, I so considered it under the provisions of Section 12 of the Trading with the Enemy Act.

XQ. 336. You verified the Bill of Complaint in this case, and as one of the grounds of complaint you set forth in the bill of complaint that the consideration paid by the Chemical Foundation for these patents was inadequate, did you not?

A. Yes, sir.

XQ. 337. So that you as trustee for the enemy owners of property are seeking to recover these patents, are you not?

A. Seeking to recover them for the custody of the Government.

XQ. 338. You are seeking to recover them, to have them turned back to you as Alien Property Custodian, are you not?

A. If the Government is successful that will be the result, sir.

XQ. 339. And that is what you are seeking in this action, is it not?

A. Yes, sir.

XQ. 340. And if recovered, you will hold them as trustee for the enemy owners, will you not?

MR. ANDERSON: I will have to note the further objection that how he will hold them is absolutely a question of law. The witness holds them under the Alien Property Act in his official capacity, I say again that while I do not think it is evidence, I am not going to object to his having the witness testify as to what he thinks his duties are under the Alien Property Act, although I can not see that that has any relation to this subject; but when it comes to asking him a direct question of how he will hold them, or what his duties are

under the Alien Property Act, then I think that is purely a question of law involving the construction of the Act, which alone the Court can determine.

THE COURT: Anything to say, Mr. Kresel?

MR. KRESEL: I will modify the question to see if I can meet the objection. I will withdraw the question.

XQ. 341. If the Gevernment is successful in this action and the patents here in question are turned back to you as Alien Property Custodian, you believe that you will be holding them as trustee for the alien enemies, do you not?

A. I will be holding them as Alien Property Custodian under the provision of the law and the treaty which states that this property shall be held until such time as Congress may determine the disposition thereof.

XQ. 342. And your construction is that you will hold them as trustee for the enemy owners, is it not? You have so testified.

A. Partially, Mr. Kresel.

XQ. 343. Why partially, in what way partially?

A. Because, sir, this property, the remaining property, is held under the provision of the Peace Treaty for the settlement of American claims; and I consider the Alien Property Custodian as also holding this property as a guarantee of claims against Germany when they are adjudicated by the Mixed Claims Tribunal.

XQ. 344. You will hold it then as a guarantee that the Germans will pay the claims and if paid, then the property goes back to the Germans, does it not?

A. If in the future the German claims can be satisfied without confiscating German property, yes. If this administration is in power, it will go back.

XQ. 345. That is what I thought. So that if the Government is successful in this suit and the patents are returned to you as Alien Property Custodian and the Germans pay the claims which are made against them, the patents will go back to the Germans?

A. If they have not expired; if the life of the patent has not expired.

XQ. 346. That is true, is it not?

A. It will be treated in the same category as any other alien property, that is in our office now.

XQ. 347. And they will go back to the Germans, will they not?

A. I cannot predict what action Congress is going to take, sir, in the future.

XQ. 348. You have just said, have you not, that you are holding this property only as a guarantee that the German claims will be paid. Now I say to you, if the German claims are paid, will they not go back to the Germans?

Mr. Anderson: If your Honor please, we have gotten the views of the witness without objection. The terms under which this property is held are fixed by Act of Congress and by the Treaties and the Act of Congress expressly provides that the property shall be disposed of as Congress may direct.

Therefore, while I did not want to object to this evidence, except my general objection which applies to all of it, and I did not want to interrupt although I think the evidence is illegal in any event, and I have no objection except my general objection that it is immaterial, irrelevant and incompetent; yet I think that to press a question of law when it is fixed by Act of Congress, and asking a witness on the stand to undertake to construe an Act of Congress, is not legal and there-

fore I have to object to any further examination along that line.

MR. KRESEL: On the contrary, sir, I am not asking him to construe; I am asking his view as to what he considers his official duties demand.

THE COURT: I think the objection is well taken, Mr. Kresel, on two grounds, first that the objection as stated is valid and also because the witness has answered as I understand it, the identical questions only two or three questions back. If there is a distinct difference between this question and the one he answered about two questions back—

MR. KRESEL: If your Honor will permit the Stenographer to read those two or three questions:

THE COURT: Very well.

MR. KRESEL: Your Honor's recollection is probably better than mine on that, and if it is a fact I shall not press the question any further.

(XQ. 343 and XQ. 344, with the answers, read as recorded above.)

THE COURT: The last is the part.

MR. KRESEL: I am glad that your Honor directed my attention to that. I withdraw the last question.

XQ. 349. Speaking of yourself, in your official capacity, at page 21 of your testimony before this Committee, you testified under cross-examination by Congressman Hawes, at the bottom of page 21, as follows:

"Mr. Miller. As I told Mr. Rayburn a while ago, Mr. Hawes, that is a determination of policy that is absolutely up to Congress and the President or the State Department. I am the administrative officer and custodian. Personally I have not hesitated to say here today that the sooner

we are divorced from this alien-property business and it is cleaned up and out of the way the better it will be. Nobody will be better satisfied than I, but it will take longer than the time I can spare to do it.

"Mr. Hawes. Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible?

"Mr. Miller. Yes, sir."

Was that your testimony?

A. Yes, bearing in mind the American claim situation which I have dealt with in my testimony, in my answers to your questions. And may I interject there, this was the result of some parliamentary fencing before a Congressional Committee, and I was not sworn. I am endeavoring to give my testimony today bearing in mind I am under oath.

XQ. 350. You mean this statement I read to you, at the bottom of page 21, would have been different had you been under oath?

A. I would have qualified it, Mr. Kresel, as I told you today, bearing in mind the American claims situation.

XQ. 351. Let me put the question to you as it was put to you by Mr. Hawes: Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible? Will you answer that?

A. I think it should be returned as quickly as possible, when the American claims situation is adjudicated by the Mixed Claims Tribunal.

XQ. 352. At page 12 of this record, speaking of the way in which the property was being held as a guarantee, you testified as follows:

"And I want to reiterate again that when we

say guarantee we do not mean that we are to eventually confiscate a dollar of this property to pay claims."

You so testified?

A. Unless it was necessary to take the proceeds of this property to adjudicate the claims, if Germany was unable to pay the bill.

XQ. 353. When you say in this passage that I have just read to you "that when we say guarantee we do not mean," to whom did you refer by the plural personal pronoun "we"?

A. I am trying to find this in here, Mr. Kresel.

XQ. 354. I will point it out to you. (Indicating).

A. Oh, yes. "We" referred, editorially as it were, to the United States.

XQ. 355. And there is no question about it, Colonel, that this Winslow Bill that you were urging the passage of at the time you were giving this testimony, was as you termed it here, an administration measure.

MR. ANDERSON: One moment. If your Honor please, when that question was asked before I felt constrained to object. I do not understand that there is anything in the United States known as an administrative measure in the technical sense. The Executive Department of the Government, which is usually spoken of as the Administration, has no part in legislation, except the power of veto in the President, and therefore the question of Bills in Congress is purely a question for Congress. Therefore, I am constrained to object, that under our system of Government there is no such thing and can be no such thing as an Administrative Bill.

MR. KRESEL: I will withdraw the question.

XQ. 356. I direct your attention to your testimony at page 18 of this record and read to you from

the bottom of the page as follows: "Mr. Huddleston" —He was one of the representatives, was he not?

A. Yes, sir.

XQ. 356. (continuing) "Mr. Miller, I understood you to say that you thought this matter should be dealt with acording to a consistent policy of our Government. That is correct, isn't it?

"MR. MILLER: Yes, sir, Generally speaking.

"MR. HUDDLESTON: Then I assume that this Bill represents, as far as it goes, the present policy of our Government?

"MR. MILLER: I should say it represents the desire of the present administration, surrounded as they are by the provisions in the peace resolu- Did you give that testimony?

A. That is my language, and I could not express it better at this moment.

XQ. 357. It is true, is it not?

A. Yes, sir.

XQ. 358. That is true?

A. Yes.

XQ. 359. Now, I return to my preceding question, when you said at page 12, these words: "We say guarantee. We do not mean that we are to eventually confiscate a dollar of his property." To whom were you referring when you said "we"?

A. With whom? I should say I can not qualify it any better than I did a moment ago by saying we—the United States. Perhaps I was assuming too much to say that.

XQ. 360. Very well, all right. So you said, speaking for yourself as Alien Property Custodian at least —

A. Yes, sir.

XQ. 361. That it was not intended even though the claims were unsatisfied, to confiscate any of this property?

A. Oh, no, you can not read that—

XQ. 362. Do I misconstrue that?

A. You can not read that into my language, Mr. Kresel, in fairness to me.

XQ. 363. I do not want to read it in fairness or unfairness to you; but is that what you meant by that statement, or is it not?

A. No, sir, I did want to see American claims paid before the remaining property of my office was returned.

XQ. 364. I see. I understand you.

A. And I so stated it time and again.

XQ. 365. Upon the books of the Alien Property Custodian, how are the patents carried, I mean at what value?

MR. ANDERSON: What patents, would you mind saying?

MR. KRESEL: All patents, any patents.

A. The audit that was made by Lybrand, Ross and Montgomery.

XQ. 366. Now, Colonel, I did not ask about the audit, but I want you to answer my question, please.

A. As I recall it, Mr. Kresel—

MR. KRESEL: That is all I ask for.

THE WITNESS: One dollar.

THE COURT: Each or all?

THE WITNESS: Each one, sir.

MR. KRESEL: Each patent.

XQ. 366a. Now, the Winslow Bill had become a law, had it not?

A. Yes, sir.

XQ. 367. Subsequent to your giving this testimony from which I have just read?

A. Yes, sir.

XQ. 368. Now, I do not want now to stop to put in a copy thereof, but listen to me clearly and see whether I do not substantially state the terms thereof. The

provisions of the Bill are that out of every property belonging or taken over from an alien enemy, that you as Alien Property Custodian hold, whether it amounts to less than $10,000, or to more than $10,000, an amount up to $10,000 should be returned; is that not right?

A. Generally, yes, sir.

XQ. 369. Under that law, you have returned German patents, have you not?

A. No, sir.

XQ. 370. None at all?

A. I specifically directed that when any claim was filed covering the return of a patent, that it be referred to my patent section and taken up with me personally. There has to my knowledge, Mr. Kresel, been no application for the return of a patent so far.

XQ. 371. Do you say then that since the passage of the Winslow Bill, no patents had been returned by the Alien Property Custodian?

A. I will have to refer, Mr. Kresel, to my records, to swear to that, but they should not have been returned under the $10,000 return principle.

XQ. 372. Did you not return approximately 150 patents to Germans—now, I am not going to confine you to any period either subsequent to or prior to the enactment of the Winslow Bill?

A. Well, now, I do not know, sir, but at the danger of meeting with an objection from you, I would like to say this, and if it is not what you want in the testimony, you can strike it out. In considering the Winslow Bill the question came up as to the patent assigned or sold to The Chemical Foundation and the War and Navy Departments. I personally was in favor of having a provision in the law that would exempt them from any of the provisions of the $10,000 return bill.

A section was so drawn and came in from the Navy Department and the War Department. I con-

sidered that all patents not heretofore sold and assigned to those various agencies, the War and Navy Departments, or The Chemical Foundation, were practically useless or they would have been applied for before for non-exclusive or exclusive license or purchase; and the patent section in the Winslow Bill was intentionally drawn so as not to prevent the divorcing from the books of my office of those so-called useless patents that had not already been sold or assigned to The Chemical Foundation or the War and Navy Departments.

Now, sir, as to whether my patent section and my law department has divorced itself of any of those patents, I will have to refer to the records of my office to ascertain the facts.

XQ. 373. At page 74 of this record, you testified as follows:

> "MR. MILLER: Just at that point, Mr. Chairman, it might be interesting for me to say to the Committee that as the common law trustee for the enemy interests in all this property I have, since I took over the office, contemplated bringing a friendly action in the Courts, as trustee for these people,"—

"These people" means the enemies?

A. Yes, sir.

> XQ. 373. (continuing) "to determine whether the compensation of 100,000 and other considerations paid for these patents, was really a sufficient sum of money, but due to the whole patent situation I have not done so. To my mind it would be found that the compensation paid at the time was inadequate, but we must bear in mind that at that time we were at war and were seizing everything we had within our power to make war with, and I am considering this proposition on the assumption we are trying to clear up this matter on a peace time basis."

You so testified?

A. That is my language, sir.

XQ. 374. And that is true?

A. You mean what I say there is true?

XQ. 375. That was true, was it not?

A. Well, I believed it; yes, sir; or I would not have stated it. May I—

XQ. 376. Now, just preceding that statement made by you, you heard the statement made by Mr. Neagle. Who was Mr. Neagle?

A. He is the Solicitor of the Navy Department.

XQ. 377. And he was testifying before this same Committee with reference to the 5700 patents that were licensed by the Alien Property Custodian to the Navy and War Departments, was he not?

A. And in support of the same patent amendment that I referred to at some length in the previous answer.

XQ. 378. Mr. Neagle said as follows in your hearing:

> "I can probably give you a partial answer to that question. The negotiations on the part of the Navy Department—"

Those were the negotiations with reference to the 5700 patents that were licensed, were they not?

A. Yes, sir.

XQ. 378. (continued) "—were carried on by Commander Norton, who has since died, and I do not know that any record was made of it. So that it is very likely that so far as the Navy Department is concerned, it is not practicable to get that information." You heard him give that testimony?

A. Yes, sir.

XQ. 379. This license for 5,700 patents, Colonel Miller, is already in evidence, so I am not going to burden the record with a recital of all of its terms. But you know, do you not, that in substance that in-

strument licensed the Government to use certain 5,700 patents therein described and released the Government from all claims for damages for having infringed those patents during the war and that the Government paid the Alien Property Custodian as a consideration one hundred thousand dollars. That is your recollection?

A. I will take your statement as a fact, Mr. Kresel.

XQ. 380. Very well; thank you. Now, you were considering then as Alien Property Custodian to bring a suit to test the validity of that transaction because, as you have testified there, you thought the consideration of $100,000 was inadequate; is that right?

A. I don't want to answer you with just a plain "yes." You can strike this out if it does not suit you: Yes, partially. I am desirous of seeing the funds in the hands of the Alien Property Custodian as large as possible as a guarantee against the settlement of these claims, whether those funds are derived from other governmental agencies or not.

XQ. 381. In other words, one of the reasons that is actuating you in contemplating this suit against the Government is, as I understand you, to get into your possession so that you as Alien Property Custodian have it to meet these German claims, whether that money comes from the United States Treasury or no; is that it?

A. That is one of the controlling features, and you may strike this out if you do not like it—

XQ. 382. No, no, just answer my question.

A. Well, I must illustrate, sir.

XQ. 383. I will let you illustrate in a minute. Won't you please answer my question. That is one of the reasons?

A. Yes, sir.

XQ. 384. Now then, go ahead and illustrate it any way you want?

A. As, for instance, I am in a number of cases endeavoring to save very heavy assessments by the Internal Revenue Bureau of the Treasury Department against the trusts in my office, because I stand in the shoes of the enemy owners—stockholders, if you want to call them that— and I feel it is my duty to protect those trusts.

XQ. 385. Colonel, you testified about this license covering 5700 patents before this Committee; do you remember?

A. Yes, sir.

XQ. 386. And you will recall that you inserted in that record a statement with reference to this particular license and with reference to other assignments and sales of patents made by the Alien Property Custodian to the Government. Do you remember that?

A. Yes, sir.

XQ. 387. You will find it at the bottom of page 15 in that record. Now, I assume that in the discharge of your duties as trustee for the enemy owners you are considering bringing an action against the Government, not only to test the validity of the transaction with reference to the 5700 licensed patents, but also with reference to all other transfers of patents made by the Alien Property Custodian to the Government, are you not?

A. I can not say that I am, Mr. Kresel.

XQ. 388. You can not say?

A. No.

XQ. 389. That is an answer.

A. I meant—I am not evading anything—I do not think so.

XQ. 390. I do not charge you with evasion at all. Have you not considered in the discharge of your duties as trustee for the alien enemy owners whether the

consideration paid by the Government for the other assignments of patents was or was not adequate?

A. I presume, Mr. Kresel, if the matter that you are referring to—the 5700 patents for $100,000—is ever taken up, that they will all be followed up, but—

XQ. 391. All of them will be tested?

A. But without prejudicing any other government department. The matter is merely resting. Nothing has been done on it since the date of my testimony.

XQ. 392. Well, there is no secret about this feature of it, is there, Colonel, that you are resting because you are waiting to see the outcome of this suit?

A. I will have to refer you—

XQ. 393. Isn't that so? I am asking you as Alien Property Custodian, you who have the duty, as you say?

A. Well, if the Government should win this suit, it would of course give us a precedent to go by.

XQ. 394. Certainly; that is exactly what I thought.

A. (continuing) Covering this and all other sales.

XQ. 395. Yes, sir. By the way, as long as we are on that proposition, do you happen to be familiar with an opinion written by a man named Brown, a lawyer in Washington, with reference to the validity or invalidity of transfers by the Alien Property Custodian?

A. That is John Wilson Brown, third?

XQ. 396. Yes.

A. I do not take what he writes seriously, and I have not read it.

XQ. 397. Has it been brought to your attention?

A. If it had, I would not read it.

XQ. 398. Let me ask you this, and I shall not dwell on it, Colonel, except for this question: Do you not know that John Wilson Brown, third, wrote an opinion for his German clients wherein he pointed out

that the only way to attack these transfers of patents and other property made by the Alien Property Custodian was upon the question of the inadequacy of the consideration?

A. I will take your statement as a fact; but please do not link me up as an ally of Mr. Brown in any way.

XQ. 399. No, indeed; I would not make any such intimation. Now, when you were considering suing the United States Government to make it pay an adequate consideration for this license covering 5700 patents, did you take the trouble to examine that license and to see what patents it covered?

A. I have read that, Mr. Kresel,—

XQ. 400. All right.

A. And—

XQ. 401. That is all I wanted to know, if you have read it. And is it the fact that that license covers patents for mobile guns, sights for guns, cartridges for ordnance, gun carriages, explosive projectiles, percussion fuses for shells, field guns, trigger mechanisms, automatic firing devices, and similar military apparatus?

A. I am familiar with that situation, because—

XQ. 402. And is that the fact, that that license does cover patents embracing those subjects?

A. Yes, and I do not countenance the stealing of some of those patents from the War Department since the war started. I am familiar with that situation.

XQ. 403. I do not know what you are referring to; but the only interest I have in that is, do you charge us with stealing them?

A. Oh, certainly not. I am referring to a situation that developed in connection with the discussion on the patent treaty with Germany last year.

XQ. 404. I know nothing about that, and I do not want to go into it.

A. I thought you did.

XQ. 405. No, I do not. And is it a fact, Colonel, that these 5700 licenses given by the Alien Property Custodian on German patents, which you intend to challenge the validity of, covers patents on artificial eyes and artificial legs, surgical devices for setting fractured legs, inhalers, devices for lifting sick people in bed and moving them, manufacture of iodine preparations, cardiac trusses and other surgical instruments?

A. I will take that as your statement.

XQ. 406. No, I want your statement. Is it not the fact that that license does cover patents which embrace those subjects?

A. I must examine it again; but I will take your statement that that license covers those particular articles you read.

XQ. 407. So we have it, Colonel, that you, as trustee for the German former owners of these patents, intend to sue the United States Government to recover from the Government moneys for using during the war processes covering munitions and surgical instruments that were used by us during the war, because you consider $100,000 an inadequate consideration, and that you are waiting only for the bringing of that suit to see whether the Government wins this suit or no?

Mr. Anderson: If your Honor please, I object to that question on the ground that it does not state correctly the witness's testimony. The witness was first read a statement by him from the evidence before the Committee, in which he said he had considered that question of whether a suit of that kind should be brought, and he said nothing had been done on it since he had testified. He has not said that he intended to bring any such suit at the present time, nor has he said that he was

awaiting the result of this suit. He said that he supposed this suit would be a precedent. If we are going to summarize the witness's testimony, it ought to be summarized correctly.

MR. KRESEL: I submit, your Honor, that I have truthfully stated this witness's testimony, and unless your Honor can see that I have not, I prefer to stand by the question as I have put it.

THE COURT: If you have misquoted or misinterpreted his testimony, the witness may point that out in his answer to the question.

(XQ. 407 repeated as above recorded.)

A. That is a double question and the answer is necessarily divisible. I must say, Mr. Kresel, you do not intentionally do so, but you ignore my continued statements that in addition to being a trustee for the enemy I have considered my office as a trustee with regard to the American claim situation. I need not elaborate on that. Secondly, the language used by me before the Winslow Committee is not necessarily going to be the policy of the Department of Justice or higher authority. If any such action is brought, of course, it must await the decision in this case, and if it is brought, it is brought, as far as I am concerned, if I am in office, for the purpose of clearing our records, and if an inadequate sum has been paid, to have the fund added to which is used as a guarantee of American claims against Germany.

XQ. 408. You were present before this Winslow Committee and heard the testimony of Mr. Neagle to the effect that the damages that would be claimed against the Government for the use of these patents covered by the license for 5700 of them would run up into the hundreds of millions of dollars, did you not?

A. If Mr. Neagle said that, yes, sir, but I had no such figure in mind.

XQ. 409. I read to you from page 76 of Mr. Neagle's testimony:

"Mr. Neagle. For the use by the Government of their patents. I should like to give you an illustration with reference to that. In the case of radio patents"—

You remember those were conveyed by the Alien Property Custodian to the Government, do you not?

A. Yes, sir.

XQ. 409. (continued)

"In the case of radio patents that were used by the Government, the various inventors, and there were quite a large number of them, put in claims against the Government for millions and millions of dollars. I am ashamed to say what I remember it to be, but I think it was $300,000,000."

You remember that testimony?

A. It is in there, yes, sir.

XQ. 410. And do you not remember the testimony given by Colonel Hull, representing the War Department, before this very Committee before which you were testifying on the Winslow Bill; and I read from page 59. You know Colonel Hull, do you not?

A. I certainly do.

XQ. 411. I read from page 59 of this record the following testimony:

"Mr. Graham." He was one of the Congressmen, was he not?

A. Yes.

XQ. 412. "Mr. Graham. If I ask you any question you do not care to answer, you decline to do so. I do not want, of course,"—do you follow me?

A. Yes, sir.

XQ. 412. (continuing) "—to expose any military secrets, but in making high explosives, such as

were used during the war, you used German patents, did you not?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: Was there any high explosive that we used during the war in which you did not use a German patent?

"COLONEL HULL: I do not know, sir.

"MR. GRAHAM: Take picric acid, for instance; that uses a German patent, does it not?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: And the various high explosives that were used in shells probably used substances in which aliens had patent rights.

"COLONEL HULL: The explosives industry and the dye industry are pretty nearly synonymous terms.

"MR. GRAHAM: Absolutely; they come back to the same thing. Now, you take the process that was used at Muscle Shoals and that is used today, and in those processes, both the Haber process and the cyanamid process, you use alien patent rights, don't you?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: You can not get along without them, so far as your present knowledge is concerned, can you?

"COLONEL HULL: Well, we had to use them.

"MR. GRAHAM: And you are using them and used them all through the line of explosives and in connection with everything we made war with, did you not?

"COLONEL HULL: We had to.

"MR. GRAHAM: Suppose you could not have used them, what kind of shape would we have been in?

"COLONEL HULL: The question carries its own answer.

"MR. GRAHAM: So it was a matter of national preservation that we used those things, was it not?

"COLONEL HULL: Certainly.

"MR. GRAHAM: Now, then, the patents were granted originally as an act of grace by this Government, were they not?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: A patent right is a different proposition from the ownership of a horse or cow or $5 in the bank, is it not?

"COLONEL HULL: I think so, and so expressed myself this morning.

"MR. GRAHAM: Can not the same power that originally granted those patent rights take them away?

"COLONEL HULL: Or limit them; yes, sir.

"MR. GRAHAM: And there is not any question in anybody's mind that understands the situation today but what we ought to, is there?

"COLONEL HULL: That is the question I was submitting."

MR. ANDERSON: One minute, Mr. Kresel. If your Honor please, I wish to object to the reading of that testimony into the record, in the manner in which it has been done, if it is read in to ask the witness whether he heard it. I can not see the relevancy of any of this testimony; I can not see that it has anything to do with the case.

MR. KRESEL: Let me put my question. I have not put a question yet.

MR. ANDERSON: Yes, but you read the evidence on the record.

MR. KRESEL: Yes.

MR. ANDERSON: Go ahead and put the question.

MR. KRESEL: Now let me put the question.

MR. ANDERSON: Very well.

XQ. 412. (continued) It is the patents as to which Colonel Hull was testifying, as I have read to you, covered by this license given by the Alien Property Custodian to the Government, namely, the license for 5700 patents, as to which you say you were contemplating suing to set aside the transaction because the amount was inadequate; was that it?

MR. ANDERSON: Just one minute. I wish to note an objection to this evidence which I have not up to the present time felt it necessary to make.

THE COURT: I did not quite hear you Colonel.

MR. ANDERSON: Up to the present time I had not thought it necessary to make it. My throat is very bad, may it please your Honor. Therefore, I did not want to make it, because I thought it unnecessary. It is entirely immaterial to this inquiry what this witness may have desired to do or thought it best to do with respect to 5700 patents assigned to the Government of the United States by the Alien Property Custodian. They are not in evidence in this litigation.

Of course, there was no direct examination upon it, and this is, in effect, direct and making the witness his own. Therefore, all of this evidence is entirly foreign to any inquiry here. I suppose the policy of the Government of the United States with respect to its litigation is fixed by the President and the Attorney General, I suppose the policy of the Government with respect to its general welfare and National Defense is fixed by Congress, and therefore it is not a matter taken up in the way it is being taken up here.

Coming now to the specific testimony, the testimony of Colonel Hull, he appears, according to the statement of counsel as the representative of the War Department. Whoever Colonel Hull may be, he does not represent the Government of the United States in the sense of fixing its policy. Whatever his opinion on questions of law, which are the questions here involved, as to the rights to and the use of these patents, it is certainly not a matter of testimony.

If this witness heard this statement made, how can that affect the situation in the slightest, how can it affect the issues in this case in the slightest? Suppose this witness's view of the situation was right or was wrong, how can it affect the legal rights of the parties here in the slightest?

Suppose the witness had desired to bring a suit against the Government to recover more money for those patents which were assigned; suppose he had been right or wrong; how can that affect the interests of the Government of the United States here? Therefore, I respectfully object to all this testimony, and should have, perhaps, objected earlier, but I did not want to do it, but I specifically object to this question in that it undertakes to inject into the record, in addition to the general objection stated, injecting into the record the opinions of Colonel Hull given before a Congressional Committee, not under oath, Colonel Hull belonging to a Department of the Government to which the witness does not belong, and it not appearing here that Colonel Hull's expressions or views had the slightest bearing on the action of the Government of the United States and therefore it is pure hearsay.

THE COURT: Just a moment. Before you begin, Mr. Kresel, from now on, objections with respect to the admissibility of testimony, and the arguments thereon, will be restricted to three minutes on each side; so you are now placed under that rule. You may have three minutes.

MR. KRESEL: To begin with, your Honor the testimony that I have read of Colonel Hull, is not testimony of opinion at all. Colonel Anderson misunderstands the testimony that I have read, or did not follow it closely enough, because if he does

follow it closely he will see that Colonel Hull was testifying as to what the War Department was doing during the war, and was not giving any conclusion or any opinion.

Now as to its materiality. We must never get away from the fact that this complaint is based primarily upon a charge of conspiracy, omitting the question of monopoly altogether; and Colonel Anderson has reserved unto himself the right at any time, and upon the final arguments, to charge fraud and conspiracy against anybody, not only against those whom he was expressly named in his Bill, so that we must anticipate that the officers of the Government who are responsible for this transaction that is here being attacked, will be eventually charged with fraud in the transaction. Now, I ask in all fairness, whether those officers are not entitled to show to the Court that in their dealing with their own Government, they dealt and acted upon exactly the same principles that they acted upon in the transaction here involved; and when we have here a responsible official of the present Government, who before a Congressional Committee has stated, and states now, that he intends to attack the validity of one of those transactions, upon the ground that the consideration was inadequate, is it not proper for us to show the circumstances under which that transaction was made, so as to show the connection between that act of the officials that are responsible for the transaction here, attacked in the light of the other transactions? That is all, your Honor.

MR. ANDERSON: I only want to say, sir, that Colonel Hull's testimony on that subject, if they wish it, the way to get it into evidence, is to call Colonel Hull, so that I may raise proper objections and cross-examine him.

MR. KRESEL: No. I have read that only to show the witness, and ask him whether or not that is the thing that he is talking about.

THE COURT: Will you read me the question, please.

(The question was repeated as follows: XQ. 412 (Continued) It is the patents as to which Colonel Hull was testifying, as I have read to you covered by this license given by the Alien Property Custodian to the Government, namely, the license for 5700 patents as to which you say you were contemplating suing to set aside the transaction if such amount was inadequate, was that it?)

MR. ANDERSON: Preceding that was the reading from the record. That is what I object to.

THE COURT: I understand. I do not see the relevancy of that, Mr. Kresel. I have not ruled on the question of relevancy in any instance; consequently, I shall not rule on that now, and it may be taken under the General Rule. My impression is that the question would not attempt to disclose facts which are relevant. If the testimony of Colonel Hull has any bearing upon the issues in this case, I take it that the relevancy would be to the issue of fraud and conspiracy raised by this Bill of Complaint. If it has that bearing, it seems to me it would be as to whether this witness was familiar with those facts as testified to by Colonel Hull, or had heard that testimony prior to the time be charged and swore to it, as verified by the Bill of Complaint—that might be relevant, but as the question now stands, I fail to see the relevancy.

MR. KRESEL: But, your Honor, I understood that the witness had said that he had heard the testimony, or I should not have proceeded with it. I will ask the witness—

XQ. 413. Having heard this testimony read now, Colonel Miller, is it not the fact that you were present and heard that testimony given by Colonel Hull?

A. Yes, sir.

THE COURT: It might have been that I have failed to make my thought clear. I may be wrong. I assume that this question will be a preliminary question—

MR. KRESEL: That is all, your Honor. I have done that in order to identify the thing that I am asking him about.

MR. ANDERSON: I wish to call your Honor's attention to the fact that this testimony was given four months after the Bill in this case was filed.

THE COURT: Is that true, Mr. Kresel?

MR. KRESEL: That is true, your Honor. It was given in January, 1923.

MR. ANDERSON: The Bill of Complaint was filed in September, 1922.

THE COURT: Then, is it relevant to the charge of conspiracy here, because it is continued to be pressed?

MR. KRESEL: Why, of course, your Honor, not only to be pressed but justified here in Court.

THE COURT: You may take the answer.

MR. KRESEL: Would you like to have the question re-read, or will you answer it?

THE WITNESS: No. Wait a minute—

A. (to XQ. 413) Yes, sir.

XQ. 414. Now, Colonel, I want to take up with you the two assignments to the Chemical Foundation that you signed. Those were drawn in your office, were they not?

A. Why certainly; any order that I sign is drawn in my office.

XQ. 415. Well, those were drawn in your office, were they not?

A. Yes, sir.

XQ. 416. And they were drawn by your employees?

A. Yes, sir.

XQ. 417. And they were drawn after conference with you?

A. Yes, sir. You—

XQ. 418. Do you want to add something?

A. I would prefer, if I may, to discuss the two assignments separately.

XQ. 419. I am going to take them up separately. When you signed each of those assignments, you knew that you were signing instruments conveying certain property to the Chemical Foundation, did you not?

A. Yes, sir.

XQ. 420. When you verified the bill in this action you knew of your own knowledge, did you not, the reasons that had actuated you in making each of those two assignments?

A. Do you want me to give those reasons?

XQ. 421. No, I am simply asking you whether you knew of your own knowledge when you signed this bill of complaint what reasons had actuated you in making those two assignments?

A. Yes; and I hope I may be permitted to state the reasons.

XQ. 422. In your bill, you allege on information and belief that the assignments were prepared by or at the instance and procurement of the defendant. Did you not know when you signed this bill whether these assignments had been prepared by or at the instance and procurement of the defendant?

A. Mr. Kresel, I can not elaborate in any answer I may give in the future any more than I have already told you about the circumstances surrounding my signing of that bill.

XQ. 423. When you verified the bill, did you not

know of your own knowledge what the facts were in the matter of the making of these two assignments?

A. I knew, Mr. Kresel—

XQ. 424. Didn't you?

A. —that the Norma—

XQ. 425. Well, didn't you know the facts? I am coming to the facts. Didn't you know them? You didn't have to have somebody tell you what they were, did you?

A. Why, yes; any Government official that runs an office the size of mine has to rely on his subordinates.

XQ. 426. You misunderstand my question. When you signed this bill of complaint didn't you know of your own knowledge, without anybody telling you, all of the facts surrounding the making of those two assignments when you made them?

A. I thought I did, sir, yes.

XQ. 427. Now, you say in this bill of complaint, on information and belief, that you executed the assignments without knowledge of the facts herein set forth and other necessary and essential facts; is that true?

A. At the time I signed them I thought it was perfectly all right to sign them.

XQ. 428. You do not get my question. In the bill of complaint you say, on information and belief that you executed the assignments—I am talking now about the assignments and not the bill—without knowledge of the facts herein set forth and other necessary and essential facts; is that true?

A. I can not give you any more of a qualified answer than I have, Mr. Kresel.

XQ. 429. That is an answer. What are the facts that you were ignorant of when you executed these two assignments?

A. I wish you would discuss these assignments separately, because there are different circumstances.

XQ. 430. Take them separately. I am very glad

to do that. Take each of them separately. Take the first one. What are the facts that you were ignorant of when you signed that assignment?

A. It is very difficult to answer a negative question. May I answer it in a positive way?

XQ. 431. I beg your pardon, Colonel. I am not asking you a negative question.

A. You asked me what facts I was ignorant of. I can tell you what facts—

XQ. 432. Listen to me, please. You say in the bill of complaint that at the time you signed these assignments you did not know the facts; do you not?

A. That is in the bill, sir; yes.

XQ. 433. Now I am asking you to tell me what facts there were that you now say you did not know?

A. Well,—

THE COURT: You mean what facts were within his knowledge at the time he signed the bill and verified the bill, or now?

MR. KRESEL: Now.

THE COURT: That he did not know at the time he executed the assignment?

MR. KRESEL: Exactly.

XQ. 434. What facts are there that you know now or when you signed the bill of complaint that you did not know when you signed the assignment? Now, have I made it plain?

A. As your question, Mr. Kresel, concerns two different questions by me, I must discuss in my answer the two assignments separately.

XQ. 435. I wish you would.

A. I would not have signed the second assignment of November 1, 1921, had I known all of the information brought to me by my counsel, by the Department of Justice, at the time the Chemical Foundation suit came up. I would sign the first transaction of

April 27, 1921, over again and I have got no apologies for it and I criticize no one for bringing it to me.

XQ. 436. Now, then, Colonel, I am thankful to you for letting me disregard now the first assignment. We are going to assume now that the first assignment is all right, is it? You have no complaint to make?

A. I can not qualify what I have said any more than in my previous answer.

XQ. 437. I am sorry, but I shall have to press you, Colonel. In your complaint you say that the first assignment was unlawful and void. Do you now say that it was right and proper? You are the witness. I can not answer for you.

A. No, I do not permit that construction, Mr. Kresel, to be placed on my remarks.

XQ. 438. But you have just said that there is nothing wrong about it and if you had to do it over again, you would do it?

A. All right.

XQ. 439. Therefore, listen to my question. You say therefore, that as to that first assignment, you have no criticism to make of it?

A. I have no apologies to make for it.

XQ. 440. I did not ask you anything about apologies. Please listen to my question.

A. I am endeavoring to answer it.

THE COURT: Just a minute. Will you put another question, Mr. Kresel?

XQ. 441. As to the first assignment, therefore, the one of April, 1921, do you now say that it was a proper and valid assignment and that you have no criticism to make of it?

MR. ANDERSON: I object if your Honor please. The witness may say what he thinks and what he thought of the assignment. He can not say that it is a proper and valid assignment, because the

question of its validity is a question of law pure and simple.

MR. KRESEL: But he is the complainant, your Honor.

MR. ANDERSON: No, he is not. He is merely an officer of the Government who swore to the bill. The complainant here is the United States Government.

MR. KRESEL: He represents it in this suit.

MR. ANDERSON: Not at all. He merely verified the bill as an accountant might have verified a bill. He does not represent the Government in this suit. The Department of Justice represents the Government in this suit by direction of the President of the United States.

MR. KRESEL: That is a novel proposition, your Honor, that the person who verifies the bill is not at all responsible for it.

MR. ANDERSON: I did not say that. A person who verifies a bill can be asked as to knowledge of its contents, if that is of any desire, but I mean to say that the person who verifies the bill does not necessarily represent the complainant, especially where the complainant is the Government of the United States, because many of these bills are sworn to by various subordinate persons, by accountants who know the facts.

MR. KRESEL: What may be done in other matters I am not concerned with. We are here now in court, brought in here upon a bill that is signed by this officer of the Government and he is not an accountant or a clerk. He is an officer of the Government. Is it contended here that this gentleman can not speak for the Government as to this particular action?

MR. ANDERSON: I mean to say, this bill is signed by the District Attorney of the District

of Delaware and the Attorney General of the United States: By the United States, by the District Attorney, and by the Attorney General. It is verified by this witness who is supposed to have known more about the facts than other officers. The District Attorney and the Attorney General are the only two officers of the Government who are authorized to sign this bill under the law.

MR. KRESEL: Now, your Honor, is it not proper that the defendant should be apprised whether Colonel Miller can speak for the Government or no? I have got to leave that to your Honor's decision.

MR. ANDERSON: I will answer that.

MR. KRESEL: Pardon me a minute.

MR. ANDERSON: I thought you asked me a question.

MR. KRESEL: Don't get excited.

MR. ANDERSON: I am not getting excited.

MR. KRESEL: Is not the defendant entitled to be now apprised whether the Government still contends that this assignment that the witness has just spoken of, of April, 1921, is or is not a valid assignment? Do they still contend that it is invalid?

MR. ANDERSON: The Government of the United States contends that that assignment is invalid as represented by the Attorney General of the United States by direction of the President of the United States and will contend to the conclusion of this case that that assignment was absolutely invalid as a matter of law.

THE COURT: Will you refer to the paragraph in the bill to which you called the witness's attention a moment ago; that is, the allegation?

MR. KRESEL: Yes, your Honor.

XQ. 442. Colonel Miller, in the 39th paragraph of the bill of complaint, at page 53, I find the following allegation:

> "The said Francis P. Garvan resigned as Alien Property Custodian on the 12th day of March, 1921, and was succeeded in said office on said date by Thomas W. Miller, who thereafter, as Alien Property Custodian, executed and delivered to the defendant, The Chemical Foundation, Incorporated, two additional instruments of alleged sale, transfer, and assignment, as follows:
>
> "1. An instrument of alleged sale, assignment and transfer from Thomas W. Miller, Alien Property Custodian, to defendant, The Chemical Foundation Incorporated, dated the 27th day of April, 1921, purporting to sell, transfer, and assign to said defendant the patents and other rights mentioned and listed in Schedules A and B therewith, a true copy of said instrument, together with the accompanying schedule, is hereto annexed as Exhibit J and prayed to be read as a part hereof."

Now, please skip the next paragraph and I direct your attention to the succeeding paragraph on page 54, which reads as follows:

> "Complainant is informed, believes, and therefore avers that said instruments of alleged sale, assignment, and transfer were prepared by or at the instance and procurement of said defendant, The Chemical Foundation, Incorporated; that said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had

the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration, and especially said instrument of November 5, 1921, was made, executed and delivered without any consideration whatever; that said alleged sales, transfers, and assignments were otherwise irregular and contrary to law, and were and are in all respects null, void, and of no effect in law or equity."

Colonel Miller, you will notice that the last paragraph which I read to you, wherein it is alleged that certain assignments were null and void and of no effect in law or equity, covered the Assignment of April 27, 1921.

XQ. 443. That is the assignment with reference to which you have testified a little while ago and now say, as I understand you, that you have no criticism to make of it; that if you had to do it again, you would do it again and that no facts with respect thereto were withheld or suppressed from you. Now, am I right about that?

A. I would have sold the patents to the Norma Company through the Chemical Foundation, if I had to do it over again, bearing in mind the date and conditions existing between the Chemical Foundation and myself at that time. Now, if that is not what you want, please ask me another question, because I want to be understood on these two assignments.

XQ. 444. No, I do not think I will ask you another question. I will repeat my former question then as to the second assignment of November, 1921. I want to know what were the facts with reference to that, that you were ignorant of at the time that you signed that assignment of November, 1921?

A. Mr. Kresel, these paragraphs that you have been reading from pages 53, 54 and 55 concern two transactions by me as Custodian. I understand they

were included in the bill because my actions were open to attack by the Government as well as those by my predecessors in connection with the Chemical Foundation transaction.

The November 5th assignment, true, was prepared in accordance with my orders by the chief of my patent division at that time. I was desirous at that time of continuing the arrangement that I found in force between my office and the Chemical Foundation when I came into office. It was a routine procedure.

If a patent or trade-mark or a copyright or any other piece of property which is covered by this bill was to be sold, assigned or licensed exclusively or non-exclusively, it was done through the channel of the Chemical Foundation and I have no apologies, official or personal, to make for these two transactions.

But if the Department of Justice has seen fit to attack my actions in this bill, that I did execute this assignment without information that I now have, it was this information. I understand, and I did so understand at the time that the November 5th assignment was in my office awaiting the approval of my immediate predecessor before I took office; and it was not executed. I executed it under the assumption that the copyrights or trademarks covered in the November 5, 1921, assignment had not been legally transferred to the Chemical Foundation by my predecessor and American users of those copyrights or trade-marks were prevented from getting proper use of them. That was one of the reasons why I executed it, to cut red tape, if you want to call it that.

I did not know that it had been waiting for my predecessor's attention before he came into office. I would not have executed that, Mr. Kresel, if it were put before me today because of the question that has been raised by, I might term it, my associates in the Government in Washington, over this transaction. I

would most certainly execute the one of April 27, 1921, because I thought the Norma Company of America ought to have the right to use those particular patents. That is all I have to say.

XQ. 445. As I gather, Colonel, you executed this November, 1921, assignment because you felt that by reason of red tape, as you call it, American users who wanted to use these patents had not been able to, and you wanted to give them an opportunity to do so. Do I get that straight?

A. Those were the facts that were put up to me, yes, sir, as I recollect them, because of the validity of the previous assignment of the same copyrights to the Chemical Foundation.

MR. KRESEL: May I have that answer read?

(Answer to XQ. 445 read as above recorded.)

THE WITNESS: I mean the question of the validity.

XQ. 446. In other words you understood there was some question as to the validity of prior assignments of patents made by the Alien Property Custodian to the Chemical Foundation, and that you were making this assignment of November, 1921, to confirm and clear up the title to those prior assignments; is that it?

A. So that American users of these copyrights could use them legally.

XQ. 447. Yes.

A. And at that time, sir, the arrangement was still in force which utilized the Chemical Foundation as the channel between my office and all prospective purchasers of patents or licensees of patents.

XQ. 448. Therefore, the purpose that you had in mind in making this assignment of November, 1921, was to clear up any question of the validity of prior assignments made to the Chemical Foundation, so that any question of title should be removed and so

that Americans might use the processes without any question as to their right to do so; is that it?

A. I have answered your question more fully than I can by any other answer.

XQ. 449. Is that the statement that you want to make?

A. In substance that is what I want to convey to you and the Court.

XQ. 450. Colonel, I have listened to your explanation and have not interrupted, but I must say that you have not answered my question, and I repeat it: What were the facts which, if you had known them in November, 1921, would have induced you not to sign that instrument?

THE COURT: Do you mean what were the facts that had come to his attention prior to the signing of the bill?

MR. KRESEL: Prior to the signing of the bill, certainly, because I am drawing his attention to that.

THE COURT: Will you repeat that question, Mr. Kresel?

XQ. 451. What were the facts which came to your knowledge before you verified the bill of complaint herein which, if you had known in November, 1921, you would not have signed this assignment of November, 1921? Do you understand my question?

A. Yes, sir. Why, the bringing of this suit, which was brought at the direction of the President, upset what we might term the friendly relations existing between my office and the Chemical Foundation. And I certainly would not have executed the November 5, 1921, assignment had I known that the Chemical Foundation sale was going—

XQ. 452. The Chemical Foundation what?

A. (Continuing) That the Chemical Foundation sale was going to be questioned by the Department of Justice.

XQ. 453. Have you answered as fully as you want to?

A. I am answering you as fully as I know how. If there are any further facts you want to bring out—

XQ. 454. I do not want to interrupt you, but is that all you want to say in answer to that question?

A. Unless further questions develop the need of a further answer.

XQ. 455. You say in this paragraph that I have read to you that facts were withheld from you with intent and purpose to secure the execution by you of the aforesaid instrument. What facts were withheld and suppressed from you?

A. I cannot enumerate any facts at this time, Mr. Kresel.

XQ. 456. Can you enumerate anything in addition to what you have already enumerated?

A. Were this not on the witness stand I presume I could converse with you at length on this, but I cannot quite see that I can answer any more questions along your general line any more fully than I have.

XQ. 457. I beg your pardon, Colonel Miller; I want to be perfectly respectful to you. I am not asking you for anything general. My question is very specific. You say in your Bill that facts were withheld and suppressed from you. Can you not state what facts were withheld or suppressed from you?

A. I can not state any more facts in answer to your questions than I already have.

XQ. 458. Now, Colonel, you said upon your direct examination that you had never read the Executive order signed by Mr. Polk, and dated the 26th of February, 1919; do you remember that?

A. I remember your question and my answers.

XQ. 459. Not my questions; I beg your pardon. Those were Colonel Anderson's.

A. Did I say that I had never read them?

XQ. 460. That you had not read them at the time you had made these assignments.

A. I have not, no, sir.

XQ. 461. By what authority did you think you were making this assignment?

A. I was naturally making it under the authority of the grant of the Custodian by—

XQ. 462. That very Executive order?

A. By that very Executive order, yes.

XQ. 463. In other words, you were signing an instrument wherein you were reciting that by virtue of an Executive order, identifying it by the name of the person who signed it and the date thereof, you were making this assignment, and yet you say that you had not read it.

A. No, I could not read an Executive order, Mr. Kresel, covering every transaction involving fifty thousand trusts in that office of mine. I have no apologies to make for that. I was operating with the Chemical Foundation, as I have described to you several times, in accordance with the routine arrangement I found in force when I came into the office.

XQ. 464. Did you know the provisions of that Executive order under the authority of which you were signing this instrument, whether you had in fact read it or no?

A. These two assignments—pardon me—I could have sold or licensed the patents and trade-marks in these two assignments under the Executive order of the President permitting the Alien Property Custodian to sell property of the value of ten thousand dollars and under.

XQ. 465. Now, Colonel, I did not ask you that. My question was very specific, and that is: Did you know the provisions of Mr. Polk's order of February 26th, 1919, when you made these assignments, whether you had read that order or no?

A. Well, I certainly was familiar with them in a general way, but I could not know them specifically, because I have testified I have not read the order.

XQ. 466. You knew, did you not, that that was an Executive order signed by Mr. Polk, authorizing the transfer of German patents from the Alien Property Custodian to the Chemical Foundation?

A. I must confess, Mr. Kresel, as far as my recollection serves me, I did not know that the original order in the Chemical Foundation had been signed by Mr. Polk and not by President Woodrow Wilson, until the question of the validity of this sale arose.

XQ. 467. Whether you knew who had actually signed the order, did you not know that there had been an Executive order authorizing the sale of these patents to the Chemical Foundation and that it was under that very order that you were undertaking to make this conveyance?

A. I knew that there had been an order.

XQ. 468. I am going to show you this order of Mr. Polk's dated February 26th, 1919, and I am going to ask you to point out to the Court anything in that order which, if you had read it, would have induced you to decline to make either of those two assignments. (Hands paper).

A. At the time I executed the two assignments, no. At this time, for the reasons that I have explained in my previous answers, yes.

XQ. 468-a. I must confess I do not understand your answer.

A. All right, sir.

XQ. 469. Perhaps you did not understand my question. Shall I repeat it to you?

A. No; I will endeavor to give you the kind of an answer that you want then.

XQ. 470. I beg your pardon, it is not the kind of an answer I want; I want an answer to my question.

A. It is evidently unsatisfactory. On April 27th, or November 5th, 1921, had I read the Polk assignment referred to, I would have executed those two assignments.

XQ. 471. You would or would not?

A. I would. By reason of the developments since that date, terminating in the bringing of this suit—

XQ. 472. Pardon me a minute; you have answered my question.

A. All right; that suits me, then.

XQ. 473. You also testified on your direct that you had not read the charter of the Chemical Foundation at the time when you made these two assignments. Do you remember that?

A. I do.

XQ. 474. Now I am going to show you the charter of the Chemical Foundation and I am going to ask you to point out what there is in that charter which, if you had read it and had known at the time when you made the assignments, would have induced you to decline to make it?

A. I can only give you—

XQ. 475. Wait a minute; let me show you the charter.

A. I thought I would save time.

XQ. 476. Very well. Are you now familiar with it?

A. No, I will go through the form of looking at it.

XQ. 477. Are you now familiar with it?

A. Let me have it, please.

XQ. 478. You would like it; very well. I show you the charter, which is Exhibit B to the Bill, beginning at page 90 thereof. (Handing paper).

A. Had I been familiar in detail with the charter of the Chemical Foundation at the time I executed the assignments of April 27th and November 5th, 1921, at that time I would have executed the assignments.

XQ. 479. Colonel, on or about the 31st day of March, 1921, you had a talk with Mr. Garvan in your office in Washington, did you not?

A. Yes, sir.

XQ. 480. Was that the only talk that you had with Mr. Garvan at about that time with reference to the Chemical Foundation?

A. That was my first conversation with him of any character. Between then and July 2nd, 1921, Mr. Garvan and I met frequently. We did not discuss Chemical Foundation each time. We may have. But we had occasion to meet quite often.

XQ. 481. Particularly at the time of the conversation of the 31st of March, 1921, did not Mr. Garvan quite fully tell you about the Chemical Foundation and its purposes?

A. He couldn't have gone into exhaustive detail because we only had about thirty minutes; but we discussed the general chemical business in the United States as relating to these German patents, and I made no secret of the fact that I was naturally interested in an industry—an American industry—and I had a very pleasant and satisfactory conversation with him.

XQ. 482. From that talk, Colonel Miller, did you not learn that it was the purpose of the Chemical Foundation to issue non-exclusive licenses upon the patents held by them?

A. I don't know whether it was on that day that I learned that fact, but I was, of course, familiar with the fact on or about that time.

XQ. 483. Were you not familiar with the fact and did you not know at or about that time that the Chemical Foundation had given to the Government of the United States, or was about to give to it, a free license covering all the patents that had been transferred to it?

A. That developed undoubtedly in our discussion

as to the future relations between the Foundation and the Government.

XQ. 484. Did you not learn at that time, Colonel Miller, that the organization of the Chemical Foundation was such that the stockholders were confined to a return of 6 per cent on their investment?

A. These are the same questions that you asked me before, and I answered I presume so, because that is the only way I can answer them today.

XQ. 485. I am sorry if I am repeating. It is so long since I examined you before.

A. I know you asked me those questions.

XQ. 486. Very well, then, I shall not repeat them. The fact is that Mr. Garvan asked you to become interested in the Chemical Foundation, did he not?

A. Yes, sir.

XQ. 487. And the fact is that he told you that he wanted to get out, and wanted you to take his place, did he not?

A. As I recall it, he wanted me to go in as Vice-President, and I presume if I qualified properly, he wanted to get rid of the responsibility of being President.

XQ. 488. And he told you, did he not, at that time, whether in so many words, or in substance, that the reason he wanted you to become interested was because he felt that the Chemical Foundation could succeed only if it had the support of the Government, and that you were a part of the Government?

A. Generally speaking I am familiar with that phase of the discussion, but as to whether it was on that day or not, I do not know.

MR. KRESEL: That is all.

THE COURT: Any re-direct, Colonel Anderson?

MR. ANDERSON: Yes, sir. I think it will be short.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 489. Colonel Miller, did you read over the Bill in this case, before you verified it?

A. Yes, sir, I read it over.

RDQ. 490. With whom did you read it over?

A. I read it over by myself, and undoubtedly there were present Mr. W. W. Wilson, my general counsel, who has been associated with your Department in the framing of the Bill.

RDQ. 491. You say Judge Wilson your general counsel had been associated with the Department of Justice in framing this Bill?

A. Yes, sir.

RDQ. 492. Was that by your direction?

A. Yes, sir.

RDQ. 493. Did you discuss this Bill with the Attorney General before it was completed, personally?

A. I was present in a conference with the Department of Justice when the Attorney General, yourself, W. W. Wilson, and others, sometime between July 8, 1922, and the date the Bill was filed.

RDQ. 494. Did you prior to making the demand upon the Chemical Foundation for the restoration of these patents in accordance with the instructions of the President go over the facts of the situation with your general counsel?

A. In accordance with the instructions of the President, I directed my general counsel and his staff to co-operate with your Department in carrying out the orders of the President.

RDQ. 495. As I recall, the concluding paragraph in the letter of the President, directs you to act in the matter under the advice of the Attorney General; is that true?

A. Yes, sir.

RDQ. 496. Did you so act?

A. I endeavored to.

RDQ. 497. Did you read a proof of the Bill before it was finally completed, with your general counsel, Judge Wilson?

A. I had in my possession a proof of the Bill which I read. I can not at this time testify as to who was present with me when I read it.

RDQ. 498. At the time of the assignment of April 27, 1921, you had been in office, I think you said, about two months, had you not?

A. Yes, sir.

RDQ. 499. Had you had an opportunity to study at that time, the relations between the Chemical Foundation and the Alien Property Custodian's office?

A. Only in the general way that I have stated from the stand today.

RDQ. 500. Yes. You were asked on cross-examination, when you were formerly here, whether you had read the report of Mr. Palmer. Had you at that time read Chapter II on the Chemical situation?

A. No, sir.

RDQ. 501. You had not. Have you read Chapter II of Mr. Palmer's report?

A. I am certain I have not, Colonel Anderson. I have had to refer to that report naturally, but I can not swear that I have read the language that you refer to.

RDQ. 502. Had you had submitted to you before July 8, 1921, any data dealing with the relations between the Chemical Foundation and the Alien Property Custodian's office, on the sale and assignments of the patents here in controversy?

A. Only as would grow out of my conversation with Mr. Garvan, that has been commented upon heretofore.

RDQ. 503. I am speaking now of July, 1921?

A. Yes. Well, that is when I was in office.

RDQ. 504. Oh, I meant to say July, 1922, at the time of the bringing of this suit. In other words, the President directed a letter to you, as the record shows, of July 1, 1922, and you made a demand on the Chemical Foundation on July 8, 1922. Did you in the intervening time have the data submitted to you, or make any investigation of the records in relation to the transactions here in controversy?

A. I was in receipt of a memorandum from my Bureau of Law in accordance with my directions that they prepare to follow out the President's directions to me.

RDQ. 505. Did that memorandum review the records to you on the subject?

A. Briefly, yes, sir.

RDQ. 506. On your cross-examination the other day, you were asked something about a call on you by a Mr. Means. Can you now state about the time of that call, and what it was about; have you refreshed your memory on that subject?

A. I am glad you asked me that question, because when it was asked me the other day, I anticipated no such question, and was naturally very hazy with regard to that matter. I have since checked my records, and find that this man called on me on May 18, 1921. You will recall that I previously gave it as the fall of 1921, and that he did not ask me for anything in connection with the Chemical Foundation, but I did confer with him on the Bosch Magneto matter in accordance with my understanding that he was a representative, and a duly accredited one of the Department of Justice.

RDQ. 507. Did he so represent to you.

A. He did.

RDQ. 507-a. Have you ever had any conference with Mr. Means with regard to The Chemical Founda-

tion or the institution or prosecution of the present suit?

A. No, sir. I would like to qualify that a little more if I may.

RDQ. 508. All right, sir. Go ahead.

A. Being the head of the Department, that is concerned directly with this matter, I would certainly know if Means had had anything to do with regard to the Government side of this case, and he has not.

RDQ. 509. After the demand made by you upon the Chemical Foundation for the return of these patents, in July, 1922, was refused by the Chemical Foundation, did you then further take the matter up with your general counsel, Judge Wilson?

A. I directed him and his staff to co-operate with your department in carrying out the orders of the President, namely, that the suit be instituted with the advice and direction of the Department of Justice.

RDQ. 510. Did you verify this bill under advice of your general counsel Judge Wilson after reading it over?

A. Yes, and in addition the advice of yourself as the counsel for the Government.

RDQ. 511. Colonel Miller, there are one or two other matters in regard to your testimony before the Committee that I wanted to ask you about. I wanted to ask you if you ever refused to execute any assignment or any reassignment from the Chemical Foundation to you or instruments between the Alien Property Custodian and the Chemical Foundation?

A. I did.

RDQ. 512. You have just handed me a paper with certain correspondence attached which bears date the 11th day of April, 1922. It is signed by Francis P. Garvan and there is a blank for the signature of the Alien Property Custodian, and it is headed "Release by The Chemical Foundation, Inc., to the Alien Prop-

erty Custodian, of all its right, title and interest in and to certain patents and trademarks." Were you asked to sign that instrument?

A. Yes, sir.

RDQ. 513. Did you decline to sign it?

A. Upon the advice of my general counsel I held it in abeyance.

MR. ANDERSON: Mr. Kresel, I would like to put that in evidence, and I think the whole correspondence should fairly go in if any.

MR. KRESEL: May I examine it?

MR. ANDERSON: You may, and I will go ahead at the present time with the examination of the witness and offer that after counsel has a chance to look at it.

RDQ. 514. Colonel Miller, I will ask you to state under what circumstances you gave the testimony which has been referred to a number of times by counsel in examination, before the Winslow Committee—what was then up?

A. The question arose as to the advisability of the Alien Property Custodian further administering or retaining in his possession the smaller trusts in the office. Ninety-three per cent—

MR. KRESEL: I do not like to interrupt and I have not up to the present; but that is not responsive to the question. The question is what was up before the committee. It was some bill, was it not?

MR. ANDERSON: I think I have a right to ask the witness the circumstances under which he gave this testimony. I will make it as short as possible.

THE COURT: Your objection is that the answer is not responsive?

MR. KRESEL: Not responsive. He was asked what was up before the committee and he is going into a long history.

Mr. Anderson: I think it was responsive, sir. I asked him for the circumstances. I want to have the circumstances in order that the evidence might be interpreted in the light of those circumstances.

The Court: Then go ahead.

The Witness: I will endeavor to be brief, but I can not—

The Court: Go ahead with your answer.

A. (continued). 93 per cent of the trusts in the office were of a value of $10,000 and under, and of an average value of $784. They were being uneconomically administered and at more expense to the Government than their continued retention would warrant.

Mr. Kresel: It seems to me, your Honor, that is going too far.

Mr. Anderson: I think it is, and if you do not object to my leading I can shorten it.

Mr. Kresel: I have not ever objected to a question by you as leading, Colonel, and I shall not.

The Court: Is it your thought that that was responsive?

Mr. Anderson: No, sir, and I am perfectly willing to have it stricken out. I think the fact that there were a number of small trusts in the office is responsive, but the uneconomical part I do not care anything about.

The Court: Would you like it all to stay in?

Mr. Anderson: I would like it all to stay in simply because it is easier to do that than to strike out parts.

The Court: Very well.

RDQ. 515. I will ask you, Colonel, as I understand the committee had up the question of returning to the alien from whom this property had been taken or the then successor of such person the amounts of $10,000,

whether that was not in effect the Winslow Bill—whether it was not the effect of it?

A. That was one of the main general principles.

RDQ. 516. And the effect of that would be to get rid of a large proportion of these small trusts; is that correct?

A. Yes, sir.

RDQ. 517. Your evidence has been read in a number of instances with respect to the question of your trust relationship. Was it in that connection that you used the language which has been referred to in your testimony?

A. Section 12 of the Alien Property—

MR. KRESEL: May not that question be answered directly, your Honor?

THE COURT: Do you want the answer to that question, Colonel Anderson?

MR. ANDERSON: Yes, sir.

THE COURT: Then it may be read.

(RDQ. 517. Repeated as above recorded.)

THE WITNESS: What language, Colonel Anderson?

RDQ. 518. The language as to your being a trustee.

A. I was endeavoring to carry out my duty under the law, Section 12 of which specifically uses the words "common law trustee."

MR. ANDERSON: I would ask leave to introduce in evidence certain portions of Colonel Miller's testimony in order to complete as far as it can be done without introducing all of it, his statements on the various points that have been read. I would like to have until tomorrow morning to specify the parts, to the end that I may shorten it, as I have never had a chance to read this testimony on account of the pressure of other duties. If I had to

put it in now I would probly put in more than I would tomorrow morning, because I can check it up and make his statements complete overnight.

MR. KRESEL: I have no objection to Colonel Anderson reserving the right to make his offer tomorrow. I do not say that I shall not object to any such offer, but I have no objection to his reserving the right to do it.

MR. ANDERSON: With that understanding it is quite satisfactory. I shall try to shorten it and will renew the offer in the morning.

If your Honor please, Mr. Kresel wants to finish reading that correspondence. I will pick out this evidence and offer it in the morning. I do not think there will be half a dozen questions brought out by that, and but a few minutes will be taken in the morning. I think it will save time rather than to go over these papers now.

THE COURT: I have been just awaiting your convenience. The Court is adjourned until tomorrow morning at 8:30.

(Whereupon, at 3:40 o'clock Standard time, adjournment was taken until tomorrow, July 12, 1923, at 8:30 o'clock Standard Time.)

TWENTY-FIFTH DAY.

Wilmington, Delaware,
July 12th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:
HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

THOMAS W. MILLER, resumed the witness stand.

MR. ANDERSON: May it please the Court, there are one or two verbal corrections which the witness desires to make in his testimony of yesterday. At page 2173, in the answer at the bottom of the page, the witness said, "Seeking to recover them in the custody of the Government." He meant for the custody of the Government. The word "in" should be "for."

At page 2174, Question 343, there is clearly a typographical error, where the witness said in reply to a question "I consider the Alien Property Custodian as also holding thus"—which should obviously be "this property as a guarantee against claims against Germany." It should be "as a guarantee of claims against Germany." The word "against" is used there twice. He asks to correct that.

At page 2177, Question 351, the word "adjudicated" is used. I will ask the witness a question on that because I do not wish to substitute a word.

RE-DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

RDQ. 519. Colonel Miller, referring to that evidence at page 2177 of yesterday, XQ. 351, you were asked by counsel: "Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible? Will you answer that?

A. I think it should be returned as quickly as possible, when the American claims situation is adjudicated by the Mixed Claims Tribunal."

You said you wished to explain what you meant by the word "adjudicated."

A. I meant in my answer to that question, when the claims were paid.

MR. ANDERSON: At page 2182, second line from the top of the page, the word "by" should be "or," so that it will read, "The War and Navy Departments or The Chemical Foundation."

THE WITNESS: There is one other correction at page 2207.

MR. ANEDRSON: Oh, yes. Next to the last line "because I thought the Norma Company of America ought to have the right to produce those particular patents" should be "ought to have the right to use those particular patents."

RDQ. 520. Colonel Miller, at various points in your evidence, you used the expression "these claims." I refer especially to page 2184, your reply to questions 380 and 381. Could you be a little more definite as to what you mean by "these claims?" The statement is ambiguous as it stands.

A. I mean by that language the claims of American citizens against Germany, Austria, or Hungary, for the loss of life and property at sea or damage to

their property when held by those Governments during the war.

MR. ANDERSON: On yesterday, if your Honor please, I stated that I would ask leave, in order to make complete Colonel Miller's statements before the Winslow Committee, without waiving my objection to that evidence, to put in additional statements related to the statements introduced. I have determined that I will only ask to insert in the record the statement on pages 4, 5 and 6 of this hearing before the Committee on Interstate and Foreign Commerce on which counsel examined Colonel Miller, yesterday. A part of that statement was read.

MR. KRESEL: Pages 4, 5 and 6?

MR. ANDERSON: Beginning at the middle of page 4 and down to the end of page 6. I will ask that that entire statement be put in as an exhibit.

MR. KRESEL: What is the purpose of that offer?

MR. ANDERSON: Simply to complete the statement of which you read a part on yesterday, so it will read as one consistent whole, and to show the circumstances under which the other statements were made.

MR. KRESEL: You are not offering it as proof of the facts, contained therein, are you?

MR. ANDERSON: Yes, I think it would go as proof of the facts contained therein, with the same effect as the statements introduced on yesterday would be proof of the facts.

MR. KRESEL: Of course, you recognize, Colonel, that there is a difference between admissions made by the witness on cross-examination and your right to introduce as direct testimony and

proof of facts a statement of this witness in this way. I object to that as not the proper way to do it. Moreover, if your Honor please, if this portion of the witness's testimony or statement before this Committee is to go in evidence, I shall ask leave to have inserted for the same purpose as the counsel is now offering that portion of the testimony, the entire testimony of this witness before this Committee.

MR. ANDERSON: In reply to the first part of counsel's statement, I would say that I understood that when Mr. Choate's and Mr. Garvan's statements were put in, it was done in the method which I have indicated. If I was mistaken in that, —I am not sure as to the record; I have not looked at it—I would offer it to show the circumstances under which Colonel Miller made these statements. If counsel desire, I would be very glad to ask the witness if he made those statements, reading the three pages indicated, or ask him if he has read them, and if they are true. Probably that would be better. As to the remainder of the statement, I would have to make the objection that I make to all this evidence. I am offering this additional testimony without waiving this objection that this hearing took place long subsequent to the filing of this Bill, and that it is entirely immaterial and irrelevant in this case and not proper evidence; but as part of it has gone in subject to the final ruling of the Court, I would put this in to abide the result of that ruling.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 630." *(See Exhibits, Vol. III, page 1507.)*

MR. ANDERSON: If your Honor will permit me, I will ask the witness this question:

RDQ. 521. Yesterday counsel on cross-examina-

tion asked you as to your testimony before the Committee on Interstate and Foreign Commerce on H. R. 13,496, taken in December, 1922, and January, 1923. Without waiving my objection to that evidence, I would like to ask you if you have read your statements at the beginning of that testimony, beginning on page 4 of the Hearing and going down to the bottom of page 6 of the Hearing?

A. I have read it, sir, yes.

RDQ. 522. Are the statements made by you on pages 4, 5 and 6, which I will not reread to you, correct to the best of your knowledge, information and belief?

MR. KRESEL: Just a minute, Colonel Miller. To that we object, your Honor, on the ground it is not competent for counsel upon re-direct to prove by his own witness any facts by way of showing that in another proceeding made a certain statement.

In that connection I desire to call attention to the fact that when Mr. Choate and Mr. Garvan were under examination and I sought to introduce a portion of their statements before various committees, in explanation of or in addition to such portions as Colonel Anderson had read upon their cross-examination, Colonel Anderson took the position that such testimony or statement was inadmissible under any circumstances, but that certainly it was not proof of the facts therein stated, and I think in answer to a question by the Court I stated that the evidence or the statement was not being offered as proof of the facts.

I understand Colonel Anderson now to be offering this portion of the witness's statement before the committee as proof of the facts.

That is not a consistent position for counsel

to take and, whether consistent or inconsistent, the objection that I make is that that is not the way to prove facts, namely, by showing that at some other place the witness had made certain statements. Moreover, your Honor has not indicated whether I will be permitted, as I desire to be permitted, to insert the balance of this witness's testimony, given upon the same subject and at the same time. I think if this portion goes in, whether it be proof of the facts or no, the balance should go in under the same conditions.

THE COURT: I will have to pass upon that last matter when you make the application.

MR. KRESEL: Very well.

THE COURT: The statement is not now offered as proof of facts, as I understand the situation; it is offered, and I said admitted. The question now is as to whether the statements therein made are true, which is testimony independent of the facts there given, and it can be brought out by a series of questions rather than by the single question, if objection is made on that point.

MR. ANDERSON: I do not know whether there is an answer to the question.

(RDQ. 522 repeated by the Stenographer.)

MR. ANDERSON: I will leave out all after the word "correct."

A. They are.

MR. ANDERSON: That is all. May it please the Court, on yesterday, I asked the witness as to this matter which I then handed to Mr. Kresel, if your Honor will recall, before I offer it in evidence. I wish to connect that.

MR. KRESEL: Page 2219 of the record.

RDQ. 523. On yesterday, you testified that you had declined to sign a certain paper, which I then identified. It is a re-assignment by The Chemical

Foundation, and is described in re-direct question 512, and you answered you declined to sign it upon the advice of general counsel and it was held in abeyance. Is this the paper which I now show you, to which you referred at that time? (Handing paper.)

A. Yes, sir.

MR. ANDERSON: If your Honor please, I would ask leave, counsel having examined these papers, to introduce the papers to which the witness refers in evidence as Plaintiff's Exhibit No. 631. In order to make the record complete, I would ask leave to introduce in connection therewith, the correspondence bearing thereon, to be read as Plaintiff's Exhibit No. 631-a to 631-n, if the Clerk can identify the letter.

MR. KRESEL: Before these documents are marked, we raise the objection that they are immaterial and irrelevant and are not competent evidence. Perhaps the Court ought to be informed as to these documents, and if you will permit me I will state their purpose, because I have examined them. The instrument in question is an instrument whereby The Chemical Foundation undertook to return to the Alien Property Custodian two certain patents. The instrument was executed by The Chemical Foundation and sent to Colonel Miller, as Alien Property Custodian, and he did not sign it. The correspondence which is offered as a part of the exhibit, is correspondence relating to this proposed re-assignment. Now, I do not see how either the correspondence or the un-executed instrument are material upon the issues here. It is not what this witness did not do as Alien Property Custodian, that is material; it is what he did do.

MR. ANDERSON: I just wish to state, if your Honor please, that on cross-examination, the wit-

ness was examined at very decided length as to acts which no doubt it will be contended were confirmatory of the acts mentioned here. This instrument is dated 11th day of April, 1922, and in the body of it undertakes to re-convey to the Alien Property Custodian two patents and then goes on to say "said instrument of confirmation and ratification bearing date March 1, 1921," which is a general confirmation by Mr. Garvan of all former conveyances, "shall so far as relates to said instrument of assignment of April 10, 1919, be construed to confirm said instrument of assignment of April 10, 1919, as thus amended," and so on. Now, the Alien Property Custodian refused some time before the bringing of this suit to sign that instrument presented to him by The Chemical Foundation by its President, purporting to confirm the instruments preceding, and on the cross-examination, I think that is a fair paper to put in with all the accompanying correspondence, for what it definitely means.

THE COURT: Was the assignment of November, 1921, a general confirmatory assignment?

MR. ANDERSON: March, 1921.

MR. KRESEL: No. The Court is right as to November, 1921, signed by Colonel Miller, we so construe it, your Honor. I should be very glad if your Honor would look at it now, and your Honor will recall the witness's testimony yesterday.

THE COURT: I recall the witness's testimony yesterday, and that was the impression I had of the interpretation and construction of the November, 1921, assignment. I want to see whether my recollection is correct. I think the objection is well taken. The paper may be marked under the general rule.

Paper received in evidence and marked "Plaintiff's Exhibit No. 631." *(See Exhibits, Vol. III, page 1514.)*

Correspondence received in evidence and marked "Plaintiff's Exhibit No. 631-a to 631-n," inclusive. *(See Exhibits, Vol. III, pages 1517-1530.)*

RDQ. 524. On yesterday, Colonel Miller, you stated that under the same circumstances as the sale of the so-called Norma Company of America in April, 1921, and under the same facts, you would have executed that assignment to the Norma Company. I refer to your evidence especially on page 2205. I would be very glad if you would state the circumstances as far as they are within your knowledge that led up to the execution of the assignment?

MR. KRESEL: Colonel, I object to that question because it does not correctly state the evidence of the witness to begin with. He did not state that this was a sale to the Norma Company or an assignment to the Norma Company. It was an assignment to The Chemical Foundation. Nor did he say that under the same circumstances, he would make a sale to the Norma Company. There is no sale to the Norma Company involved.

MR. ANDERSON: If that is your objection, Mr. Kresel, I withdraw the question and I will turn to the evidence.

RDQ. 525. At page 2205 of your testimony on yesterday, this question was asked you:

"That is the assignment with reference to which you have testified a little while ago and now say, as I understand you, that you have no criticism to make of it; that if you had to do it again, you would do it again and that no facts with respect thereto were withheld or suppressed from you. Now, am I right about that? A. I would have sold the patents to the Norma Company

through The Chemical Foundation, if I had to do it over again, bearing in mind the date and conditions existing between The Chemical Foundation and myself at that time. Now, if that is not what you want, please ask me another question, because I want to be understood on those two assignments."

Would you please state the conditions existing at that time to which you refer; and if you have any correspondence on the subject, I will be glad to have you produce it.

MR. KRESEL: We object to the question, your Honor, unless it be shown that the conditions that the witness is about to disclose were conditions that were known to The Chemical Foundation. In other words, you can not impair the validity or the force of an instrument which conveys property rights to one of the parties by showing that there was some undisclosed reason in the mind of the vendor or the person that makes the conveyance. I do not know what evidence is sought to be disclosed here, but I must be careful and must make my objection in due time; and so we object upon the ground that it is immaterial and irrelevant as to what conditions were in the mind of this witness, unless such objections had been disclosed and were known to The Chemical Foundation at the time this conveyance was made.

THE COURT: And are first shown by the witness, before answering the question, to have been within the knowledge of the defendant?

MR. KRESEL: Yes, your Honor.

THE COURT: I think the objection is well taken. The answer may be received under our general rule.

RDQ. 526. Will you state the conditions?

MR. ANDERSON: I think his answer will prob-

ably disclose that the facts were known to The Chemical Foundation.

A. The date was April, 1921. The conditions were as follows: I found that the routine of the office existing at that time provided that all licensing, assignment or sale of patents would be through the channel of The Chemical Foundation and at that time The Chemical Foundation, its officers and my office and myself were proceeding under that procedure of routine. As I said yesterday, there had been no interruption of what I will term the friendly relations existing between The Chemical Foundation and my office and myself at that date, April, 1921. I think those facts were known to The Chemical Foundation, their officers and employees.

RDQ. 527. Then state the circumstances surrounding the assignment of these patents covered by the instrument of April 27th; what is within your knowledge of the subject or came to you officially?

A. A request was made by Mr. Nones, of the Norma Company, for the purchase or license of these patents.

MR. KRESEL: Pardon me, Colonel, if I interrupt you here.

We object, your Honor, to any further statement, especially as to statements made by third parties to this witness in the absence of the defendant, upon the ground that such statements are not binding upon the defendant and can not affect the validity of this instrument. Moreover, your Honor, we object upon the ground that this line of testimony is immaterial and irrelevant for this reason: As we understand the Bill of Complaint, it is not sought to set aside this particular assignment upon any ground other than that the assignment was made without a knowledge of the facts, and because certain facts were suppressed

from the witness, although the facts so suppressed are not disclosed in the Complaint, nor did the witness indicate them yesterday upon his examination. Now, that is the ground upon which the assignment is being attacked. If so, we are confined to an inquiry as to those grounds. The witness is now proceeding to state what conversations he had with third parties which led him to make this assignment.

THE COURT: There is no allegation that it was made by reason of the friendly relations between Colonel Miller and the officers of The Chemical Foundation?

MR. KRESEL: No, your Honor, not at all.

MR. ANDERSON: There is a statement in the Bill, I think, if your Honor please, that the assignment was otherwise illegal and void. That is, of course, a conclusion of law.

MR. KRESEL: It is a mere legal conclusion.

MR. ANDERSON: Counsel for the Government will, of course, insist that this assignment was unauthorized for reasons of law appearing from the face of the Bill. The witness having been cross-examined as to the circumstances here involved, I think he is entitled to show those circumstances, and I understand——

THE COURT: Do I understand, Colonel Anderson, that you are offering evidence in support of an allegation in your Bill, which allegation is a conclusion of law?

MR. ANDERSON: No, sir, I am offering evidence explaining the transaction as to which the witness was asked on yesterday.

THE COURT: What is the specific allegation to which the testimony now sought is directed?

MR. ANDERSON: The specific allegation to which this testimony is directed is that the facts

were not understood by this witness and that they were not in fact known to him at the time he executed this assignment, because the facts, as he understood them, were not the true facts.

THE COURT: I should like to ask you to turn to the Bill and point out the allegation to which this testimony relates.

MR. ANDERSON: I shall be very glad to do that, sir.

MR. KRESEL: Colonel, you will find the relevant portions at pages 54 and 55 of your Bill.

MR. ANDERSON: Thank you.

> "Complainant is informed, believes, and therefore avers that said instruments of alleged sale, assignment, and transfer were prepared by or at the instance and procurement of said defendant, The Chemical Foundation, Incorporated; that said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration, and especially said instrument of November 5, 1921, was made, executed, and delivered without any consideration whatever; that said alleged sales, transfers, and assignments were otherwise irregular and contrary to law, and were and are in all respects null, void, and of no effect in law or equity."

Then there is another later allegation.

THE COURT: That does not answer my question. I did not ask you for your general allega-

tions. I asked you for your specific allegation to which this testimony is directed, if you care to answer.

MR. ANDERSON: That is the allegation covering the thirty-ninth paragraph following the detailed description, and then the general allegation in the Bill as to the invalidity of all these assignments follows in a subsequent paragraph, but it probably does not enlarge that excepting in very general language.

THE COURT: Then, as I understand you, you do not care to answer the question which I asked you?

MR. ANDERSON: I have answered to the best of my ability, if your Honor please. If your Honor will make it more specific, I shall do my best. That is the allegation which I read.

THE COURT: The objection is well taken; but you may take the answer under the general rule.

A. An offer was made to me as Alien Property Custodian for the purchase or licensing of the eleven patents referred to in this assignment of April 27, 1921. The Norma Company of America, through its proper officers, desired these eleven patents to complete the purchase of the property which they had bought from my predecessor. They proved to my satisfaction that they should have had these patents when they bought the Norma Company originally, and my entire official interest in the whole transaction was merely the carrying out of my official desires, namely, that the Norma Company should be in possession or use of these eleven patents, which, by the way, deal with ball-bearings, and it was for that purpose that I directed that a paper which afterwards turned out to be this assignment of April 27, 1921, be drawn up by the proper official in my office carrying out the terms of the sale or the licensing of these patents to the Norma Company.

RDQ. 528. Who had charge of this matter in your office?

A. The chief of my Corporation Management Division, Mr. Paul Smith, is the officer to whom I gave these directions.

MR. KRESEL: Before you put another question, Colonel, in order to preserve our record I now move to strike out the answer to the last question on the ground it is immaterial, irrelevant and not binding.

THE COURT: I think the motion is well made, and if we were trying the case under the strict rules of evidence the motion would have to be granted. Under the general rule which we have adopted for this case, the motion will be denied.

MR. ANDERSON: Subject to your Honor's ruling, of course, I wish to offer in evidence some correspondence relative to the matters to which the witness just testified.

RDQ. 529. The correspondence which I now hold in my hand, and which you handed me, is the correspondence relative to the matters to which you have just testified?

A. Yes, sir, it is.

MR. ANDERSON: I now ask leave to offer in evidence the following correspondence upon this subject. Letter dated December 4, 1918, A. Mitchell Palmer to Henry B. McCormick, Esquire, 305 North Front Street, Harrisburg, Virginia.

MR. KRESEL: We object to the introduction of this letter, your Honor, upon the grounds that I urge to the testimony of the witness given in answers to the last few questions. Further, I object upon the ground that there is nothing in this letter to indicate that it refers to the transaction that the witness is testifying about, and I direct attention to the fact that this letter is dated De-

cember 4, 1918, antedating by two and a half years the advent of Colonel Miller as Alien Property Custodian. The evidence does not show that he knows anything about either the circumstances that gave rise to the writing of the letter or what it refers to.

RDQ. 530. Colonel Miller, was this letter taken from your official files in the office of the Alien Property Custodian, upon that subject (handing witness)?

A. Yes, sir; that is the photostat of a letter from my official files.

RDQ. 531. Was the endorsement "Norma Company of America" on it when it came into your possession?

A. Yes, sir; that is just as it came out of the files, as I found them in the office.

RDQ. 532. It came from the file on the subject of the Norma Company of America, did it?

A. Yes, sir.

MR. KRESEL: I contend, sir, that that is no proof. Simply because the instrument is entitled "Norma Company of America" is no proof that it has anything to do with this transaction.

By THE COURT:

Q. 533. When have you seen it, Colonel, do you recall?

A. Your Honor, I would have seen that letter in examining the file of the Norma Company in April, 1921; also in going over papers that would be transmitted to the Department of Justice in connection with the bringing of this action.

Q. 534. Have you any distinct and specific recollection of having seen it on either of those two occasions; and, if so, on which?

A. No, sir.

THE COURT: Do you press your offer?

MR. ANDERSON: Yes, sir.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 632." *(See Exhibits, Vol. III, page 1531.)*

MR. ANDERSON: I next offer in evidence a letter on the letter-head of Emery, Varney, Blair & Hoguet, signed by Mr. Varney, addressed to Lucien H. Boggs, Esq., dated March 15, 1920, as Plaintiff's Exhibit No. 633. Counsel has asked me to let him read the whole file before I offer any more. I shall be glad to do so with your Honor's permission.

MR. KRESEL: Now go ahead.

MR. ANDERSON: I understand you do not object to the authenticity of this?

MR. KRESEL: No. I have never raised that objection.

THE COURT: Its purpose is the same?

MR. ANDERSON: The same as the other correspondence in relation to the assignment of April——

THE COURT: That goes to show what?

MR. ANDERSON: I will read it, your Honor.

THE COURT: I do not mean the facts, but I mean it is directed toward what point?

MR. ANDERSON: It is directed to show the circumstances under which the assignment of April 27, 1921, which covered eleven patents on ball bearing appliances, which was assigned to The Chemical Foundation, and under which the Norma Company of America took a license, and it shows the accompanying circumstances as to that assignment.

THE COURT: Does your Bill seek to set aside that assignment?

MR. ANDERSON: Yes, sir.

THE COURT: And this correspondence is offered to show what?

MR. ANDERSON: To show that the facts and circumstances under which that assignment was made, that the witness was acting upon a mistaken conception of the facts when he made that assignment, as shown by the assignment and the accompanying correspondence.

MR. KRESEL: But that is not the allegation.

MR. ANDERSON: It will show all the circumstances surrounding the assignment which has been questioned.

THE COURT: I am not concerned with all the circumstances surrounding the assignment. I am concerned only with such facts and circumstances as will tend to support your allegation showing that the assignment was made under fraud, accident, mistake or conspiracy, and I do not understand that there are any other equitable grounds for setting aside, other than fraud, accident, mistake or conspiracy. Does this evidence now offered tend to show fraud, accident or mistake?

MR. ANDERSON: In my opinion, it tends to show a mistake, and a mistake of facts, upon which the Polk order was predicated.

THE COURT: And the mistake of fact was what? Was it a mutual mistake of material facts, or a mistake of fact on the part of the assignee, or on the part of the assignor, and if so, how was the mistake of fact on the part of the assignor induced?

MR. ANDERSON: The mistake of fact on which the officer acted, I think I can briefly state as follows: That the request had been made for an assignment to the Norma Company of America of these patents, on the idea that they were included in a prior sale as he has testified to. He turned

it over to his subordinates to prepare the necessary papers, believing them to be true. The Polk order, if valid——

THE COURT: Now, Colonel Anderson, I am not asking you a single thing about power. Power is entirely a different thing, and if there is any question as to the power of these people to make these assignments, that is one thing; but when I am asking for evidence with respect to fraud, accident or mistake, it is not an answer to tell me that there was a lack of power.

MR. ANDERSON: No, I am merely telling you that the Polk order undertook to authorize the assignment of property which related to the purposes and objects of The Chemical Foundation. Now, our contention is, as to this specific fact, that the witness at that time was not familiar with the Polk order, and that he was mistaken as to this being related——

THE COURT: Let us stop there. Is it your contention that the fact that the witness had failed to familiarize himself with the Polk order is sufficient ground in and of itself or in connection with other facts to enable the Government to ask the ground of fraud, accident, or mistake?
that this assignment of April 19th be set aside on

MR. ANDERSON: That is only one of a number or series of facts which I was trying to recite; and that therefore, the assignment of this matter to The Chemical Foundation, which was prepared by the Corporation Department and brought to the witness, was an assignment of matter which was made by an entire mistake of the character of stuff that could be assigned by the Alien Property Custodian to The Chemical Foundation and that it was made under a misunderstanding of the relations of The Chemical Foun-

dation to that office. That is as accurately as I can state it. If I introduce evidence that does not sustain the point, then of course, it will not have any value.

THE COURT: Have you alleged in the bill, as one of the equitable grounds for setting aside this assignment, any mistake on the part of Colonel Miller, any mistake of facts?

MR. ANDERSON: I have alleged a want of knowledge of the facts, which is a mistake of facts or misunderstanding of the facts.

MR. KRESEL: On the contrary, your Honor, may I read from page 54 of the bill:

> "That said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth"——

That is, in the bill set forth; and there is nothing in this bill about any mistake about this particular assignment.

> "——and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration."

The charge here is not mistake. The charge is that facts were withheld from this witness.

MR. ANDERSON: That is not the whole charge. The first part of the charge relates expressly to a mistake of facts or a misunderstanding of facts.

MR. KRESEL: It says that he acted on the matter without knowledge of the facts herein. That is not a mistake of fact. And that he acted with-

out knowledge. How are we to be injured thereby, because he did not know what he was doing? How are we responsible for that? It is not charged that we misrepresented to him or that we withheld facts from him.

MR. ANDERSON: I have undertaken to state to your Honor as accurately as I could the theory on which I think this evidence is material.

THE COURT: I understand that and I think it has no bearing, that it is not binding in any way upon the defendant, and that it not only constitutes no ground for setting aside the assignment, but the evidence offered is no justification in any way. It may be put on the record under our general rule.

Letter dated March 15, 1920, last referred to, received in evidence and marked "Plaintiff's Exhibit No. 633." *(See Exhibits, Vol. III, page 1532.)*

MR. KRESEL: It is understood, is it, that all this correspondence which is now being offered is subject to the objection I raised to the first letter?

MR. ANDERSON: Certainly.

I offer in evidence letter of April 26, 1921, addressed to Colonel Miller by W. M. Nones, President of the Norma Company, to be identified and read in evidence as Plaintiff's Exhibit 634.

Received in evidence and marked "Plaintiff's Exhibit No. 634." *(See Exhibits, Vol. III, page 1533.)*

MR. ANDERSON: I offer in evidence letter dated March 23, 1920, addressed to Messrs. Emery, Varney, Blair & Hoguet, attention of L. E. Varney, signed Lucien H. Boggs, General Counsel, to be identified and read in evidence as Plaintiff's Exhibit 635.

Received in evidence and marked "Plaintiff's

Exhibit No. 635." *(See Exhibits, Vol. III, page 1535.)*

MR. ANDERSON: I offer in evidence a letter dated February 17, 1921, signed by Messrs. Emery, Varney, Blair & Hoguet, this being a copy. I suppose it will be admitted that it was signed by them. The signature is not on it.

MR. KRESEL: Yes.

MR. ANDERSON: Dated February 17, 1921, addressed to Mr. Paul Smith.

By MR. ANDERSON:

RDQ. 535. I believe you said Mr. Paul Smith was Chief of the Corporation Division of the Alien Property Custodian?

A. Yes, sir.

Received in evidence and marked "Plaintiff's Exhibit No. 636." *(See Exhibits, Vol. III, page 1536.)*

MR. ANDERSON: I offer in evidence letter addressed to the Alien Property Custodian, signed Kalish & Kalish, dated January 24, 1921, with respect to the patents in question.

Received in evidence and marked "Plaintiff's Exhibit No. 637." *(See Exhibits, Vol. III, page 1540.)*

RDQ. 536. Now, Colonel Miller, you have presented to me a memorandum dated the 4th of April, 1921. Do you recall a conference on about April 14, 1921, at your office, in regard to this matter?

A. Yes, sir.

RDQ. 537. Can you recall who was present at that conference or any of those persons present?

A. Mr. William M. Nones of the Norma Company of America, Mr. Paul Smith, and myself.

RDQ. 538. Can you say whether this is a memorandum presented to you at that time by Mr. Nones on this subject?

A. Yes, sir.

MR. ANDERSON: I offer in evidence the memorandum which the witness has just identified, dated the 8th of April, 1921, to be identified and read in evidence as Plaintiff's Exhibit 638.

MR. KRESEL: In addition to the other objections that we have urged against the correspondence which has just been put in, we object upon the additional ground to this memorandum as a statement by a third party, namely, this man Nones, not at all official; it is not an expression of even an opinion by the Alien Property Custodian or any official act of his department, and is not binding upon the defendant.

THE COURT: I do not know of any rule of evidence under which it may be admitted, save under our general rule.

Received in evidence and marked "Plaintiff's Exhibit No. 638." *(See Exhibits, Vol. III, page 1541.)*

RDQ. 539. Colonel Miller, do you recall how the price named in this instrument of $550 for eleven patents was arrived at?

A. As near as I can recollect the general price of $50 per patent was the basis of the offer.

RDQ. 540. What do you mean by "general price?"

A. As I recall it, that was the average price agreed upon in the transaction. We were to accept fifty dollars a patent, which made a total of $550.

MR. ANDERSON: I think that is all, if your Honor please, that I wish to ask the witness.

RE-CROSS-EXAMINATION.

By MR. KRESEL:

RXQ. 541. Colonel Miller, as I understand your statement with reference to this Norma transaction, it

is this: that you wanted the Norma Company to have these patents and that you were using The Chemical Foundation simply as a conduit through which these patents might be transferred or a license given thereunder to the Norma Company; isn't that right?

A. Yes, and in accordance with the routine in my office at the time.

RXQ. 542. The Chemical Foundation did not ask you to transfer these to it, did they?

A. No, the initial request came through the Norma Company.

RXQ. 543. And before you signed this assignment you familiarized yourself with such facts as were available to you in this correspondence which has just been put in, the memorandum which Mr. Nones presented to you and the conferences that you had with him?

A. Oh, yes, I was familiar with the transaction.

RXQ. 544. You knew, did you not, that unless you had an Executive order authorizing you to dispose of these patents, you could not convey them either to The Chemical Foundation or to anybody else without putting them up at public auction?

A. The Executive order, Mr. Kresel——

RXQ. 545. Didn't you know that?

A. (continuing). ——is an Executive order providing that the Custodian can sell property of the value of $10,000 and under without a specific Executive order from the President.

RXQ. 546. Then in making this assignment you were acting under the Executive order made by the President authorizing the Custodian to sell any property at private sale if valued at less than $10,000?

A. Yes, sir.

RXQ. 547. I direct your attention to the assignment signed by you, page 480 of the Bill of Complaint, and ask you to read therefrom so much thereof as refers to the authority under which you were acting.

A. Well, according to that as I read it now, Mr. Kresel, it appears that the Norma Company transaction was made under the so-called Polk order. I am just glancing over it hastily. Is that what you want to bring out?

RXQ. 548. Yes, that is exactly what I want to bring out.

A. And I have just said, as far as my recollection serves me, that my selling of these patents to the Norma Company was in my mind under that Executive order of the President which permits the Alien Property Custodian to sell property of the value of $10,000 and under without additional Executive orders, and it appears from these pages which you have asked me to look at that the assignment which I signed was under the Polk order.

RXQ. 549. But, Colonel Miller, we can not know what was in your mind.

A. I am telling you now frankly.

RXQ. 550. Pardon me a minute. Do not let us talk together, or at the same time.

A. Pardon me.

RXQ. 551. Wait for my question. I say we can not tell what was in your mind; but the instrument that you signed shows, does it not, that you were making this assignment pursuant to the order signed by Mr. Polk, February 26, 1919?

A. There is no denial of that fact.

RXQ. 552. Isn't that right?

A. It is right there.

RXQ. 553. Surely at that time you knew what the Polk order provided, did you not?

A. I did not, sir. Mr. Kresel, I have endeavored to tell you and the Court in answer to all questions, as I said yesterday, that the detail of this original Executive order, the selling or assigning of these patents originally to The Chemical Foundation, the fact that

it had been signed by Frank L. Polk and not by President Woodrow Wilson, did not come to my attention as far as I recollect, until after this sale was questioned.

RXQ. 554. But, Colonel, I am not speaking about the name of the person who signed it, and I am not drawing that distinction now. Do you mean to say that you signed this instrument basing it upon the authority of that Executive order without knowing what it provided; is that what you want to say?

A. Mr. Kresel, if you want to read that construction into my testimony——

THE COURT: That will require a yes or no answer, Colonel Miller. If you want to explain it afterwards, you may, but it calls for yes or no.

THE WITNESS: May I have it stated again, your Honor?

(RXQ. 554 read as recorded above.)

A. Yes, but I would like to qualify my answer.

RXQ. 555. Now go ahead and qualify it.

A. I have endeavored to show that in the operation of my office it was necessary for me to act on a number of matters which I could not scrutinize personally and with great care, and, as I stated a moment ago in answer to Mr. Kresel's question, I was honestly of the opinion that the original sale of these patents to the Norma Company was executed under the authority of an Executive order other than the so-called Polk order.

RXQ. 556. Is that all you want to say about it? Because I want to give you every opportunity to say anything you like.

A. Unless you have further questions, sir.

RXQ. 557. When you made this assignment you did know that there was an Executive order authorizing the Alien Property Custodian to sell at private sale property valued at less than $10,000, did you not?

A. Yes, sir.

RXQ. 558. Had you read that Executive order?

A. That was in the——

RXQ. 559. Had you read it?

A. That was in the manual, the printed manual of the Alien Property Custodian's office.

RXQ. 560. Had you read it?

A. Why, certainly.

RXQ. 561. Do you mean that the order of Mr. Polk was not in the printed manual?

A. If it is, sir, I have not seen it there.

MR. KRESEL: It is in evidence as one of the plaintiff's exhibits.

RXQ. 562. Is this the book that you referred to? (Handing it to the witness.)

A. Yes, that is the one.

RXQ. 563. I direct your attention to the fact that the Polk order appears here in full at pages 92 and 93 of this book. (Handing it to the witness.) Do you see it?

A. Yes, I see it.

MR. KRESEL: What I was showing to the witness was Plaintiff's Exhibit No. 1—the book marked Plaintiff's Exhibit No. 1.

MR. GALLOWAY: I think Plaintiff's Exhibit No. 1 is only one order in that, Mr. Kresel.

MR. KRESEL: I mean the book in which Plaintiff's Exhibit No. 1 is contained.

RXQ. 564. Colonel, knowing that you had the authority as Alien Property Custodian to sell property at private sale if valued at less than $10,000, why did you not transfer these patents direct to the Norma Company under that authority?

A. I have said a number of times, Mr. Kresel, that I followed the routine procedure existent in my office at the time which, in connection with the sale and licensing of patents, trademarks, copyrights, etc., was

the use of The Chemical Foundation as the channel thereof.

RXQ. 565. You knew, did you not, that you had no authority to transfer to The Chemical Foundation anything that did not pertain to the purposes of that corporation?

A. If you ask me specifically at this date whether I knew that or not, I can not answer you. I, of course, know it now and have known it for some time past.

RXQ. 566. When you signed this instrument in April, 1919, did you not know that your authority to make transfers to The Chemical Foundation was circumscribed by that consideration?

A. I told you that I have no recollection of having read the so-called Polk Executive order.

RXQ. 567. But you did read this clause before you made the assignment, did you not, which I read from the assignment:

> "Whereas, I have determined that the Letters Patent of the United States and the applications for Letters Patent of the United States enumerated in Schedules A and B, hereto attached and made a part hereof, relate to the objects and purposes of the said The Chemical Foundation (Inc.) as expressed and defined in its charter?"

You certainly saw that, did you not?

A. I will not swear to that; and I will say further, if you will permit me, that my confidence in the man who brought it to me was sufficient to cause me to sign that assignment——

RXQ. 568. Without reading it?

A. Yes, sir. I have done that often, as many a public official is required to do in the execution of his duties. That is a well-known fact.

RXQ. 569. I am not concerned with that, Colonel. Do you now say you signed this instrument without reading it?

A. I am unable to answer your question specifically under oath.

RXQ. 570. Then I will put it in a different form. Did you read this instrument before you signed it?

A. I can not recall that I read it in its entirety.

RXQ. 571. In the clause that I have just read to you it is said that you as Alien Property Custodian determined that the patents in question related to the objects and purposes of The Chemical Foundation as expressed in its charter. Had you read its charter?

A. You know full well, Mr. Kresel, that public officials execute papers on the recommendations of their subordinates time and time again, and that was the way this was executed.

RXQ. 572. Having made that statement, will you answer my question? Had you read its charter at that time?

A. I testified a number of times heretofore no.

RXQ. 573. This assignment was made subsequent to your talk with Mr. Garvan, was it not?

A. Yes, sir.

RXQ. 574. From your talk with Mr. Garvan did you understand that ball bearings referred to the purposes and objects of The Chemical Foundation?

A. I don't think that detail ever came out in my conversation with Mr. Garvan.

RXQ. 575. These patents you knew when you made the assignment did cover a process of making ball bearings?

A. Yes, sir.

RXQ. 576. But one thing is certain, Colonel, isn't it—that before you signed the instrument you read the correspondence which Colonel Anderson put in in connection with this matter?

A. I certainly went over the file which included that correspondence.

RXQ. 577. In one of these letters put in by Colo-

nel Anderson, namely Plaintiff's Exhibit No. 634, which is a letter from Mr. Nones to yourself as Alien Property Custodian, dated April 26, 1921, a letter from you to him of the 23rd of April is referred to. Can you produce a copy of that letter?

A. Yes, sir; but not this morning. I will have to get it from my files.

RXQ. 578. I wish you would send it to Colonel Anderson.

A. May I make a note of that, then?

RXQ. 579. Yes, April 23rd, 1921, from yourself to Mr. Nones.

A. All right, sir, I will send that up.

RXQ. 580. You noticed, did you not, in this correspondence that some suggestion was made as to how much these patents should be sold for?

A. There must be. I have not read that recently, Mr. Kresel. If you want to examine me on that I would like the privilege of looking at it for a moment.

RXQ. 581. I will show it to you in a minute, but I am trying to test your recollection at present. Was there not some discussion between Mr. Nones and yourself with reference to how much should be paid for these patents?

A. Oh, undoubtedly so.

RXQ. 582. Mr. Nones made no payment to you for these patents, did he?

A. No. Not under the terms of the assignment.

RXQ. 583. Nor his company?

A. No.

RXQ. 584. The $550 which is recited as a consideration was paid to you by The Chemical Foundation?

A. Yes, sir.

RXQ. 585. But in your discussion with Mr. Nones, you do recall, do you not, the question of how much should be paid therefor was discussed?

A. It was undoubtedly discussed, Mr. Kresel.

RXQ. 586. Do you remember what was suggested as a consideration to be paid?

A. I can not unless I refer to the records.

RXQ. 587. Look at one of the letters put in by Colonel Anderson, Plaintiff's Exhibit No. 633, which is a letter from Mr. Varney to Mr. Boggs, in which, you see, Mr. Varney says:

> "Mr. Hoguet and I advised that in every such case, the purchaser be permitted to acquire, for a small sum, a naked license—a license which amounts simply to a waiver of suit thereunder—so that he will be immune from prosecution in the future under such patent or patents. As we left the matter, I understand that you were agreeable to this course and that you would take up the matter at once with the Custodian and fix the consideration for such a license. In my opinion, this should be paid as a lump sum and I think ten dollars per patent would be fair, reasonable and proper under all of the circumstances."

You were familiar with that at the time you made this assignment, were you not?

A. I can not testify today, Mr. Kresel, that that paragraph you have just read was paramount in my mind or had impressed itself upon me.

RXQ. 588. Well, did you have an appraisal made of the value of these patents?

A. No, sir, not that I can recall.

RXQ. 589. Did you have anybody advise you as to the relative value of each of these eleven patents?

A. I can not recall that I did.

RXQ. 590. You sold them at $50 apiece.

A. I presume, Mr. Kresel——

RXQ. 591. Did you not?

A. I presume, Mr. Kresel, that the amount of $50 apiece was probably derived from the general average upon the original sale of 4,500 patents to the Foundation, I presume so.

RXQ. 592. In other words, you, as Alien Property Custodian, if I understand you correctly, were making this transfer pursuant to the original arrangement that had been made for the transfer of all the other patents; is that what you want to say?

A. And in accordance with the routine procedure that I found in my office at that time.

RXQ. 593. And at the same price?

A. General average, yes.

RXQ. 594. Regardless of what the value was, insofar as you knew anything about it?

A. I was controlled, as I have told you, by the routine procedure I found in my office existing at that time between my office and The Chemical Foundation.

RXQ. 595. Now, when did you finally determine as Alien Property Custodian, that you were no longer controlled by the routine procedure?

A. The exact date, sir, I can not recall, but one moment——

RXQ. 596. Give it to me approximately as near as you can?

A. You know full well—I will answer it this way: With the possibility of a question in this sale, naturally, I was careful in my transactions, as is evidenced by the assignment put up to me in May, 1922, which was discussed here yesterday, and which I did not execute, upon the advice of my counsel.

RXQ. 597. So we have it that it was not until May, 1922, that you finally determined, as Alien Property Custodian, that you had to exercise independent judgment and discretion and that you were no longer bound by the routine that you found in your office regarding transactions between the Alien Property Custodian and The Chemical Foundation?

A. It was evidently around that time.

RXQ. 598. Now let me ask you, Colonel: Around that time, too, the question was being broached as to

attacking the sale to The Chemical Foundation, was it not?

A. It had been broached, as you know, in debates in Congress, in the newspapers, and from other quasi-public sources.

RXQ. 599. And you know, Colonel, that that is not what I am referring to. I say, about May, 1922, the Government, you as Alien Property Custodian, the Department of Justice, was bestirring itself to start this suit?

A. No, sir; I can not testify today that in that particular month or any particular day in that month of 1922 I had received any official or unofficial communication, written or verbal, on the bringing of this suit.

RXQ. 600. But was it not at or about the time when this suit was about to be broached that your dealings with The Chemical Foundation, as you have outlined them, changed?

A. I——

RXQ. 601. Now, frankly, isn't that so?

A. I may say this: In the spring——

RXQ. 602. Now, isn't that so?

A. Well, I have no objection to answering in the affirmative, if that will help you.

RXQ. 603. Then won't you please answer?

A. Yes.

RXQ. 604. And it was because of the impending action to set aside the sale to The Chemical Foundation, namely, this suit, that you declined to sign this reassignment of the two patents from The Chemical Foundation, was it not?

A. I can not elaborate any more than I have in my previous——

RXQ. 605. I am trying to fix the time, simply. It was about that time?

A. You can not fix by my testimony today any

specific date in the year 1922. I will have to refer to my memory and my records.

RXQ. 606. All right. Now, the instrument that you declined to sign was an instrument reassigning to the Alien Property Custodian two certain patents, was it not?

A. That is true.

RXQ. 607. In other words, The Chemical Foundation was offering to give back to you for no consideration whatsoever two certain patents, isn't that right?

A. Yes, sir.

RXQ. 608. And you declined to accept it, is that right?

A. Yes, sir.

RXQ. 609. At whose request was it that The Chemical Foundation was tendering the return of these two patents? Was it not at your request?

A. Mr. Kresel, I have not examined that file, and to answer it properly I will have to examine it.

MR. KRESEL: Mr. Clerk, let me have the correspondence that went into that, please?

THE WITNESS: I wish you would. That will answer the question.

RXQ. 610. I direct your attention to the first of this series of correspondence. It is addressed to The Chemical Foundation from your office, dated November 19, 1921, and reads as follows:

> "On examination of our records I find that patents Nos. 912,352 and 1,108,307 were assigned to The Chemical Foundation on April 10, 1919. They were also licensed to the Government on April 3, 1920, and they were sold along with other assets of the C. P. Goetz American Optical Company and assigned by the Custodian to Merton E. Grush, the purchaser of that company, under an assignment dated June 8, 1920.
>
> "Will you kindly take this matter up with Mr. Garvan and ask him for me if he will care to quitclaim these patents to Merton E. Grush?"

Does that refresh your recollection?

A. I will stand on anything that is in those records, Mr. Kresel.

RXQ. 611. Very well. Then do you not see that your office was asking The Chemical Foundation to quitclaim these two patents?

A. I won't deny that fact.

RXQ. 612. And your office having made that request of The Chemical Foundation, and The Chemical Foundation agreeing to it, sending you a form of assignment, you declined to accept it because this suit was about to be brought; is that it?

A. Because of what I have termed the change in the friendly relations existing between my office and the Foundation.

RXQ. 613. That is very good.

A. (No answer.)

MR. ANDERSON: I would like to call Mr. Dold now for cross-examination.

THE COURT: Do you withdraw the application that you put in the remainder of the testimony?

MR. KRESEL: No, your Honor. I was about to make it.

THE COURT: Are you through with Colonel Miller on both sides?

MR. KRESEL: I am through with my questions; yes, sir.

MR. ANDERSON: I am.

(Witness excused.)

MR. KRESEL: I now offer the balance of the testimony of Colonel Miller given before the Committee on Interstate and Foreign Commerce of the House of Representatives, which begins at the top of page 7 of this volume entitled, "Hearings before the Committee on Interstate and Foreign Commerce of the House of Representatives on H. R. 13496," extending therefrom to Page 43 of

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this volume, and again, beginning at Page 74 of the same volume. There are only two answers on that page. Also at Page 83 of this volume, and Page 84. Also at Page 144 of this volume and 145. Also at Page 255 of this volume, extending to Page 258, and Pages 272 and 273.

THE COURT: Has it been testified that Colonel Miller so testified at that time? Is there any evidence that Colonel Miller gave that testimony before the Committee?

MR. KRESEL: Under our general stipulation, your Honor, it has been agreed between us that the fact that witnesses did so testify in these various proceedings is conceded. Am I correct, Colonel Anderson?

MR. ANDERSON: Without calling witnesses to prove that they did so testify?

MR. KRESEL: Yes.

MR. ANDERSON: I did not undertake to recall the exact language of the stipulation, but I think if Colonel Miller were called to the stand, he would say that that was a true transcript of his statement at that time. He was not under oath. That was a statement.

MR. KRESEL: Colonel, is that not our stipulation?

MR. ANDERSON: I do not recall the exact language and therefore I do not want to undertake to verbally state what the stipulation was. But I will not raise the question and will waive the necessity for calling Colonel Miller and having him say that he so testified before this committee, as to the statements contained in the record referring to him and attributable to Colonel Miller. There are many other statements by other persons in that transcript which I think are subject to objection.

No. 312 127

In the Supreme Court of the United States

OCTOBER TERM, 1925

UNITED STATES OF AMERICA, APPELLANT

v.

THE CHEMICAL FOUNDATION, INCORPORATED,

APPELLEE

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

TESTIMONY OF A. MITCHELL PALMER

withstanding that, in view of the unusual expression by counsel of his opinion as to what has been accomplished in this case, I do not think it would be fair to the Government to have that statement without the statement on the part of the Government that while we recognize and it is hardly necessary to say that when counsel enter upon a defense of a case, they do not waive any of their positions in the law, but rather seek to sustain their positions, and while I recognize also the weight of the consideration upon counsel of a desire for a full exposition of any facts in connection with the case, and the Government at the outset of this case declared its desire to the same end—indeed I think the Government has gone beyond the usual practice in putting in evidence, in stepping over the usual strict limitations confining itself to evidence that might be helpful to itself, to the end that the full facts may go in. But with all that, since counsel has expressed his opinion, I think it is fair to say that the Government feels and will argue in this case that it has established every claim that it made in this case and introduced evidence under every paragraph except one as to which reservation was made yesterday; and, in the second place, that upon the law of this case the Government is entitled to a decree.

If counsel want to test that question at this stage we are glad to do it; if not, we are very glad to have the defense go in fully, and prefer it, to the end that all sides may be fully heard. But I have always taken the position in this case that it is a question of law and this case might properly be disposed of upon the bill and answer but for its peculiar character requiring, as we view it, an exposition of the facts.

A. MITCHELL PALMER.

A. MITCHELL PALMER, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Your name is A. Mitchell Palmer?

A. That is right.

Q. 2. And your residence is where?

A. Stroudsburg, Pennsylvania.

Q. 3. You are by profession a lawyer?

A. A lawyer.

Q. 4. Did you hold the office of Alien Property Custodian?

A. I did.

Q. 5. Do you remember when you were appointed to that office?

A. I was appointed late in October. I think my commission was dated October 22, 1917.

Q. 6. And prior to your appointment of Alien Property Custodian, had you held any other public office?

A. Yes, I had.

Q. 7. Will you state what office you did hold?

A. I had been a member of Congress from 1909 to 1915 and was, at the time of my appointment as Alien Property Custodian, Chairman of the Pennsylvania District Board under the Selective Service Act.

Q. 8. How long did you remain in the office of Alien Property Custodian?

A. From October 22, 1917, to March 4th, or possibly March 5, 1919.

Q. 9. Were you then appointed to a public office?

A. On March 5th, I qualified as Attorney General of the United States.

Q. 10. And for how long a period did you continue as Attorney General of the United States?

A. Until March 4, 1921.

Q. 11. The office of Alien Property Custodian was created by an Act of Congress?

A. It was provided for in the Trading with the Enemy Act, so-called.

Q. 12. Prior to the enactment of that legislation, was there any such office as Alien Property Custodian?

A. There never had been such an office in the history of the world.

MR. ANDERSON: I do not know that that is material, but the distinguished witness is an able lawyer and I will ask him to confine his answer to responses to the question. It is a rather broad answer to say there never was such an office in the history of the world. The true evidence of that would be the Statutes, and so forth. I am not going to object to getting the preliminary examination in, but at this time I think it would be well to suggest that the questions be limited to direct answers to the question.

MR. KRESEL: You think I should put in the Statutes of the world.

MR. ANDERSON: No, sir, I am not interested in anything outside of this Statute.

MR. KRESEL: I have no objection to striking out the remark.

THE COURT: There is no motion to that effect.

A. The answer is no.

Q. 13. At all events, when you took office in October, 1917, did you organize this office?

A. Yes.

Q. 14. Will you, in a general way, please state how you organized it; what bureaus you established; how you sought to administer this office?

MR. KRESEL: That is simply preliminary, Colonel.

MR. ANDERSON: I am not going to object at present, unless it goes too far.

A. We built an organization, so far as we could foresee, of a kind that would provide for all the various duties of the Alien Property Custodian under the Trading with the Enemy Act, conceiving that the Alien Property Custodian could not possibly perform all the duties that were laid upon him by the act, in person, but that he had to build an institution for that purpose.

The Act provided, for instance, that after investigation the President might determine that property was enemy-owned and by demand take it over, and that power was delegated to the Alien Property Custodian.

MR. ANDERSON: If your Honor please, I am very reluctant to interrupt a witness; but I think that possibly it would be better if counsel should direct his questions to specific points. Statements such as the witness is making and explanations such as he is making necessarily involve statements of law, statements of powers, things of that kind, which are not proper subjects for testimony; and I think, if I may suggest, that it will save me the necessity of objecting, as I am not going to be particularly technical, and will also facilitate matters if it could be possible to ask for the specific facts which counsel desire.

MR. KRESEL: I shall do that as far as it is possible; but in these preliminary matters it is not possible to ask specific questions. I shall no doubt direct the witness's attention specifically to points as we go along. I think, Colonel, you will find that there is nothing that he will say that will be detrimental to your interests in this respect.

Q. 14. (continuing). Will you proceed, Mr. Palmer?

A. So we divided the organization into several bureaus, putting at the head of each a chief of the bureau, and the bureau in every case expanded as the business of the office grew. They were, first, a Bureau of Administration, which was really a chief clerk's office having to do with the personnel and operation of the Alien Property Custodian's office as a department of the Government; a Bureau of Investigation, charged with the duty of passing upon all reports on enemy property which were received, and is a preliminary way for the custodian's attention deciding as to whether it was enemy property, and also charged with the duty of investigating all questions of alleged enemy ownership of property in order to determine the facts. Of that bureau I made Mr. Francis P. Garvan, of New York, the chief.

MR. ANDERSON: May I ask if there was any written order creating this bureau?

MR. KRESEL: I am going to inquire.

MR. ANDERSON: If so, I think it should be produced.

Q. 15. Was there a written appointment?

A. I do not think so.

MR. ANDERSON: I mean the written orders creating this organization, because the written orders would be the best evidence of what was the organization.

MR. KRESEL: Not necessarily, Colonel. It is not the sort of a thing I need prove by documentary evidence when I have the man who had the power and did the act.

MR. ANDERSON: If he gave orders, the orders are the best evidence.

A. (continued). I doubt very much if there was any written order. You understand, when I started

this work I had no precedent to go by. The City of Washington was crowded with war workers. I was shoved off into a little back room behind a tailor shop, with nothing to begin work with except a lead pencil and a colored messenger at the door, and I had to work fast and build rapidly, and we did a great many things by oral orders which in normal times we possibly would do in the usual, careful and routine method of Government departments.

Q. 16. You have spoken of the Administration Department and the Bureau of Investigation. What other departments did you build up?

A. Then we created a bureau for the purpose of managing all the properties which came into our possession pursuant to our demands, and we called that, after some discussion, the Bureau of Trusts, and of that I made Ralph Stone, who was then president of the Detroit Trust Company, of Detroit, Michigan, the chief.

We had also a Bureau of Audits, charged with the duty of directing all the auditing of the office and all the auditing of enemy concerns and enemy properties which we took over, of which I made Haskins & Sells, certified public accountants, the chief, who acted through Mr. Homer A. Dunn, a member of their firm. I think possibly at the very beginning that work was done by Ross Brothers, Lybrand and Montgomery. Mr. Dunn soon succeeded them.

We had also a Bureau of Law, which, as its name implies, was composed of attorneys whose duty it was to advise all the other bureaus with respect to their legal rights, powers and duties. Of that bureau, after a little while, Mr. Lee C. Bradley, of Birmingham, Alabama, became chief.

We had also a Bureau of Sales, created after the so-called Sales Amendment of March, 1918, of which Joseph S. Guffy, of Pittsburgh, formerly general

manager of the Philadelphia Company, was the chief.

That was the skeleton of the organization. The way the business flowed through the office was about in that order. Under the Act all persons having enemy property in their possession or owing money to an enemy person were required to make written reports to the Alien Property Custodian.

My first act almost was to give public notice that these reports must be filed within a certain period. I think I named thirty days. I extended that time from time to time until as I recall it the last day for filing reports under the law was December 20th.

Q. 17. 1917?

A. 1917. After our forms had gone out and our notices had been given wide publicity, the reports came in in a perfect torrent until I had received before Christmas something like 35,000 separate reports. Those reports were all examined by the Bureau of Investigation, whose people worked for weeks, day and night, in three shifts, twenty-four hours a day, to get through them; and it was only after they had passed them and sorted out the duplicates and that sort of thing, that the demands for the property were issued.

Q. 18. May I stop you there a minute, Mr. Palmer. You spoke of reports and now you have spoken of demands. Did you adopt forms on which such reports were being made?

A. Yes.

Q. 19. And as to demands, did you adopt forms of demands?

A. Yes.

Q. 20. You had to adopt those yourself? I mean, you had no precedents, or anything of that sort?

A. We had to prepare and adopt them, both.

Q. 21. Did you want to say anything further when I interrupted you?

A. I was going on to describe, if I understood your question properly, how the business flowed through the office; that is all.

Q. 22. Yes, please go right on.

A. After these reports were gone over by the Bureau of Investigation, if it was determined by my subordinates that it was enemy property, demands for the property were prepared for my signature. I signed the demands and they were served; and when the property came in, it was taken charge of by that division in the so-called Bureau of Trusts which had to do with that particular kind of property.

There were a large number of divisions in that bureau. They continued to manage it and to operate it, to see that depositaries were appointed for the funds and income received and properly credited and deposited in the Treasury of the United States, under the advice of the Bureau of Law, which had a man assigned to each one of these divisions as its special counsel, and acting constantly in conjunction with the Bureau of Audits, who were directed to make any examinations of these properties that the divisions in the Trust Bureau saw fit to require.

Q. 23. In addition to the Bureau of Investigation in your own office, which was under the immediate direction of Mr. Garvan, did you avail yourself of other information from governmental agencies as to the enemy property?

A. Yes.

Q. 24. Prior to the amendment of the Trading with the Enemy Act that was passed in March, 1918, had you as Alien Property Custodian received information with reference to the extent of German property in the United States?

A. Yes.

Q. 25. I wish you would state as briefly as you can what information came to you in your official ca-

pacity with reference to the extent and character of German holdings in the United States?

Mr. Anderson: May it please the Court, I understand of course that all this evidence is taken subject to the general objection. I have not made it yet, I overlooked it for the time. Therefore, I wish now to put upon the record the fact that the plaintiff objects to all evidence of this witness heretofore taken, and, to the end that the objection may be made in form, moves to strike out the same as immaterial and irrelevant to the issues in this case, and for the further reasons stated in my opening statement to the Court, which I will not repeat in view of the method under which we are proceeding, and in the various discussions before the Court which have taken place as appear on this record.

For convenience I will ask that counsel agree and the Court consent that this objection may be taken as applying to every question and every answer and, if the same be admitted by the Court, that an exception be awarded the plaintiff thereon, saving the necessity for its constant renewal. Is that satisfactory, Mr. Kresel?

Mr. Kresel: Yes, sir.

Mr. Anderson: Then with that understanding I will avoid objections as far as possible during the examination of the witness unless some specific reason comes up.

As to the particular question, I feel constrained to object on the ground that it is too indefinite and calls for information of such voluminous character if answered in accordance with its terms, that it would be equivalent to a complete history of the work of the Alien Property Custodian, which I assume cannot be relevant to this issue.

I will have to ask that counsel make his questions specific as to the information which he desires, to the end that I may make such objections thereto as may be necessary. I cannot object to a question of this kind specifically, for the reason that some of the information as to which the witness is asked might be relevant to this case and some might not.

In the next place I wish to specifically object upon the ground already indicated in the argument, that any evidence in this case as to the activities of the Germans prior to our entrance into the war—which, as I have already pointed out, have been tried and settled in a higher forum, and as to which I can join in condemnation equal to that of counsel for the defendant—cannot be material to this case. That has been argued and I am not going to do more than state it.

I do not know whether I have made my objections very clear, but I hope they are clear enough for your Honor to understand the position of the plaintiff, to the end that we may avoid repetition. But as to this specific question I must object on account of its generality and indefiniteness, and must respectfully ask that counsel put his questions specifically to the end that there may be specific answers, that I may be able to object to the question and also prevent evidence going in which would be not responsive to a proper question.

MR. KRESEL: I shall endeavor, if your Honor please, in my examination of this witness, in so far as possible to put specific questions to elicit specific answers. These matters that I am now inquiring about are preliminary matters having to do with the organization and the operation of

the office of Alien Property Custodian in the early days.

THE COURT: The purpose being to give a setting for the specific acts here in question?

MR. KRESEL: Exactly; and, as your Honor will notice from the question, I am tending toward the time when the March 28, 1918, amendment to the Trading with the Enemy Act was before Congress. We all realize the importance of that particular amendment.

I do not agree with Colonel Anderson that the operation of the Alien Property Custodian's office is immaterial in this case. On the contrary, I think it is of great materiality, and while it is not my purpose to burden this record with a complete history of the operation of that office, did I think it was necessary for the protection of the interests of this defendant to place before the Court a complete history of the operation of that office, I should have no hesitation to argue before your Honor that we would be entitled to do that.

My present question is directed to showing by this witness what information he had before him in his official capacity as to the extent and character of the German property in the United States. I shall follow that by inquiring as to what he had done in managing that property between the time that he took office and the time that the March amendment was presented to Congress; because it is my purpose to show that whereas one policy was being pursued by the Government under the Act as it was originally enacted, namely, that of having the Alien Property Custodian simply conserve the property, the amendment of March, 1918, made a complete change in the policy of the Government for the treatment of this property.

MR. ANDERSON: May I reply very briefly, sir. The question that counsel has asked for calls for a complete statement of the information of the witness prior to March 28, 1918.

MR. KRESEL: A statement as to the kind and character of property?

MR. ANDERSON: Yes. The witness has said that prior to the thirty-first day of December, I think, some 35,000 different properties or trusts were reported to him. If the question were answered in accordance with the terms of it, it would be necessary for him to tell about the entire 35,000. There is one trust involved here. I could not object to the question specifically or to have the answer of the witness go out as not responsive to the question for the reason that the witness could, with great ability, and I do not doubt with great interest to us all, as a matter of historical knowledge, speak from now until adjournment time this afternon, in response to that question, and never go outside of the limits of the question.

Of course, while I recognize that this witness, being a distinguished lawyer, will not even avail himself of such a large opening to make a speech of that kind or go outside of what he concedes to be relevant to the question, yet, in the defense of the interests which I represent here, I must ask for a more specific opportunity to limit this evidence and I therefore object to the question very earnestly.

In the next place, the policy of Congress in this matter is, I presume, to be taken from the Acts of Congress. What the witness may have known about the German property can have no bearing upon the situation, as I see it, or what his knowledge may have been on the subject, be-

cause, while he had been a leading member of that body, he had, of course, resigned when he became Alien Property Custodian.

For all those considerations, I think it is very essential, or I would not make this objection, that we be given the opportunity which was given the other side. If your Honor will recall, your Honor held me quite strictly—and I do not say that with the slightest suggestion of criticism—in the examination of witnesses for the plaintiff here to specific questions, many of them being objected to on account of being too general. I recognized that the technical objection was good in many cases and required the witnesses to confine themselves very strictly in their responses. Now, I must respectfully ask that the same rule—as I know your Honor will—be applied to this evidence, no matter who the witness is or what the conditions are.

MR. KRESEL: I am certainly not asking the Court to apply any different rule.

MR. ANDERSON: I did not mean that you were. I simply say that that rule was followed.

MR. KRESEL: I do not think it was necessary to call attention to that. I press my question. I think I am entitled to have it answered in the form I have put it.

THE COURT: May I be told what the question is?

(Q. 25 repeated as recorded above.)

MR. KRESEL: I have limited it, as your Honor will see, simply to the character and the extent of the holdings.

THE COURT: Now, then, as to its materiality. With respect to a few questions asked by the Governor, I have expressed my views. At times, I did not. At no time did I rule upon the materi-

ality or relevancy or pertinency of the testimony. All questions and all facts that the Government desired to put in, it was invited to put in, prior to its formal close.

I have no desire or purpose or intent to apply a different rule in any particular to the testimony offered by the defendant than to that offered by the Government.

So far as the specific question is concerned, if my view of it is correct, namely, that its purpose is merely to furnish a background or setting from which the acts here specifically in question may be more intelligently understood, I take it that the question is not objectionable. But if the purpose of the question is to call forth from this witness a prolonged, detailed statement of facts which will do more than furnish a setting for the transaction herein complained of, I take it that it is objectionable and I think it proper, therefore, that counsel for the defendant should at this time so modify or amend the question now put to this witness as to indicate the scope, as well as the character of the information now called for.

Q. 26. Mr. Palmer, I wish you would state what information you had as Alien Property Custodian as a result of the operations of your office between October, 1917, and March, 1918, with reference to the amount of property German-owned in the United States?

Mr. Anderson: Same objection, sir; and in addition, I think he is asking this witness for information derived from the operations of his office, which is an extremely general source of information and might call for the most indefinite hearsay, newspaper clippings and everything else, because he stated he kept them; and I ought to be able to test, at least, whether it is his own knowl-

edge or coming from newspapers and things of that kind.

THE COURT: I want to add to what I said with respect to the previous question that I take it, Colonel Anderson, you do not deny that where the terms of a Statute of Congress, as well as a contract, are open to different interpretations or constructions, that interpretation or construction may be aided by the surrounding circumstances and facts, namely, the situation which it was intended to remedy or relieve.

MR. ANDERSON: I do not deny, if your Honor please, the general principle of law which your Honor has stated. Of course, it is well recognized. But I do state that in this case, as to this particular statute, it has no application because the language of the statute is perfectly clear. I want to say, however, that your Honor may not misunderstand me, that while I object to it as immaterial and irrelevant, I recognize under your Honor's ruling in this case that that would probably be overruled, provided the question was properly limited and specifically expressed.

THE COURT: I thought I probably had not made clear the reason for stating that I was willing to hear the facts which constituted the background or setting, which probably did not indicate my true meaning. The question is what?

(Q. 26 repeated as above recorded.)

MR. ANDERSON: I would like to add one further objection, if your Honor would allow me: that all this information is already in the record in the form of an official report from this witness.

THE COURT: Is that report in as a disclosure and statement of facts; or is it in merely as a report?

MR. ANDERSON: I understood counsel to intro-

duce it as an official report of the Government. What its value is as evidence, I am frank to say I do not know.

MR. KRESEL: May I answer that question, your Honor?

THE COURT: Yes.

MR. KRESEL: If the report which Colonel Anderson refers to is the chemical section of the report of Mr. Palmer to the President in February, 1919, then I direct attention to the fact that that portion of the report was introduced by the Government as its evidence, and I quite agree with Colonel Anderson that that report is in evidence, speaks for itself, and is proof of the facts therein contained, and that the Government is bound thereby beyond any question. But that is no reason why I cannot have this witness answer the particular question that is now pending.

MR. ANDERSON: The counsel introduced the entire report, if your Honor will remember, and also the chemical section was included as an exhibit in the answer in this case by the stipulation that was introduced by both sides.

THE COURT: Are you willing, then, to concede now, in order that there may be no question about it in the future, that the report introduced as Defendant's Exhibit No. 30, being report of Mr. Palmer, as Alien Property Custodian, to the President, and by him submitted to Congress, shall be taken as evidence of all facts therein stated? Is that agreed upon by counsel?

MR. KRESEL: I did not know whether the question was directed to me or to Colonel Anderson.

THE COURT: The question is directed to each of you.

MR. KRESEL: Of course, in so far as we put in

that report we put it in as proof of the facts therein contained, and certainly the Government must take that position with reference to the section of the report that it introduced.

THE COURT: What I am trying to get is whether it is conceded on both sides that not the chemical section only of the report, but the entire report may be looked at by the Court in considering this case as evidence of the truth of the facts therein stated, or must it be viewed merely as a statement of the situation contained in the report and submitted to Congress, and as not evidence of the truth of those statements?

MR. KRESEL: May I say to your Honor, I have already answered the question directly as far as the defendant is concerned. May I state further, with all due deference to your Honor, that the question is not open for decision by counsel. The authorities are to the effect not only that official reports are proof of the facts therein contained, subject, of course, to be disproved by the opposing side, but where, as in this case, the Government itself places in evidence the whole or a portion of an official report, the Government is bound thereby, not only to the extent that it shows that a report was made containing certain statements of fact, but is bound by it as proof of the facts as though they had called a witness who had under oath testified to those facts. There is no question about—I say there is no question; my reading of the authorities has convinced me that that is a question that is beyond any doubt.

THE COURT: I thought possibly counsel might be able to agree upon this, so that that question could be behind us for all time.

MR. KRESEL: So far as we are concerned, we answer your Honor's question in the affirmative

immediately, namely, that we feel that the proof of the report is proof of the facts and the truth thereof. We have not yet heard from counsel for the Government.

THE COURT: Do you question that statement?

MR. ANDERSON: That it is proof of the facts and the truth thereof?

THE COURT: Yes.

MR. ANDERSON: I am perfectly willing to have those reports considered to be proof of the facts to the same extent as if testified to by a witness. I am not objecting to that, but the legal effect of it I do not concede as counsel has stated.

THE COURT: Then, if we cannot agree to that, may we have the question?

(Q. 26 was repeated as follows):

"Q. 26. Mr. Palmer, I wish you would state what information you had as Alien Property Custodian as a result of the operations of your office between October, 1917, and March, 1918, with reference to the amount of German-owned property in the United States?"

MR. ANDERSON: I have one point, your Honor, which I do not think I made clear. Assuming that what your Honor has said would apply in this case, that the prior facts and circumstances would be considered as a construction of this act, which I, of course, do not concede, what Mr. Palmer may have known is a matter of not the slightest consequence so far as that is concerned (I do not mean that is any suggestion that Mr. Palmer's knowledge was not important in connection with this whole matter); but as to what Congress did, the only thing that Congress could be affected by would be matters that were actually within its knowledge officially, and it is rather difficult to prove what those facts are, I should imagine; but

the question calls for the knowledge of this witness, and as he was not a member of Congress, I cannot see that it would have any relation to it.

THE COURT: As now advised, I do not see the pertinency of this question. I do not see that it is subject to any other objection than that of irrelevancy. So the answer to it may be taken under the general rule, if counsel so desire.

Q. 26. (Continued.) Will you answer, please?

A. The reports which I have mentioned and which were filed during that period, all of which were voluntary reports, made under the law, disclosed enemy-owned property in this country aggregating more than five hundred million dollars in value, according to the appraisals which we had made, property located in practically every—well, you asked only as to the amount.

In addition to that, there was a large body of enemy-owned property whose ownership was at that time undisclosed, but as to whose enemy ownership we had knowledge from various official sources.

We had at our command all of the Secret Service and Intelligence Agencies of the Government in every department, who were under instructions to send to us all information which came to them relative to enemy-owned property in the United States, including the War Trade Intelligence, the War Department Intelligence, the Naval Intelligence, the Bureau of Investigation of the Department of Justice, the Treasury Secret Service; and we had, in addition to that, reports in writing constantly from the Secret Service and Intelligence Bureaus of all the allied countries, who were constantly sending to us through their diplomatic representatives and otherwise, all the information they had relative to the ownership of German property in this country.

In addition to that, we had at our command all

of the wireless messages which had been transmitted across the sea between Germany and the United States for a very considerable time immediately preceding the war, running into tens of thousands of messages, concerning which I employed a large force of persons to decode and translate and pick out of the messages those which referred to transfers of German property made in this country by their owners in Germany for the purpose of avoiding the consequences of a state of belligerency between the two countries. Based upon that information at that time, not disclosed by reports from the persons having the property in charge, but from these various agencies, there were in addition to the five hundred millions of property possibly a couple of hundred millions more, most of which we afterwards got.

Q. 27. We will come to that. We have now spoken of the extent of the German holdings here in amount. Will you please very briefly indicate the industries in which you found such German holdings?

MR. ANDERSON: Same objection.

A. The German investment in this country was in a wide variety of industries and in a wide variety of commercial and financial operations, extending into practically every State in the Union, in Porto Rico, the Virgin Islands, Panama, Hawaii, Alaska and the Philippines.

They had large interests in textile manufacturing, chiefly in New Jersey. They had large interests in metal concerns in New England and Philadelphia. They were raising rice and tobacco and sugar in the South and in Hawaii and in the Philippines. They had large interests in some railroads in this country. They were in the cement business, in the banking business, in the manufacture of ship valves, of machinery of various kinds, especially the so-called inside transpor-

tation machinery; they were in chemicals, dyestuffs and pharmaceuticals.

They made—oh, pretty nearly everything. I used to say "from candy to lead pencils." I think the first concern we took was a lead pencil factory.

Q. 28. You took over as Alien Property Custodian such concerns as you determined to be German-owned. Did you operate them if they were going businesses? I am speaking now only of the period prior to March, 1918, you understand.

A. Yes. If the German interest in the American business was stock in an American corporation owning the business, I demanded and took over the stock. If that stock was a controlling interest in the company, I ousted the Board of Directors and elected directors representing the new stockholder, namely, the A. P. C. If it was a minority interest only in the company, I demanded and always received representation on the Board of Directors proportionate to the ownership of the A. P. C. in the stock. In that way, through my stockholders whom I was appointing, I operated all these American businesses enemy-owned.

Q. 29. And, speaking generally, prior to March, 1918, were the operations of such concerns profitable?

A. They were highly profitable.

Q. 30. Was there any special reason therefor?

MR. ANDERSON: If your Honor please, I object.

MR. KRESEL: I withdraw that.

Q. 31. Did you, prior to March, 1918, as Alien Property Custodian sell any enemy-owned property?

A. It seems to me I sold a little, some commodities; that might be to prevent waste. I am not certain when that was, but we made some early sales of commodities.

Q. 32. In other words, under the act as originally

enacted, you, as Alien Property Custodian, made sales of enemy-owned property in your possession only when necessary to prevent waste?

MR. ANDERSON: If your Honor please, I object.

THE COURT: I think the objection is well taken, to the form of the question.

MR. KRESEL: There was no answer to it, your Honor, so I will reframe the question.

Q. 33. Did you make any sales of enemy-owned property prior to the amendment of March, 1918, except in cases where it was necessary to prevent waste?

MR. ANDERSON: I object also to that.

THE COURT: I think the question is still open to the same objection.

Q. 34. Prior to the amendment of the act in March, 1918, did you sell any enemy-owned property in your possession that was not perishable?

A. No.

MR. ANDERSON: I object to that, on the ground that the question whether it was perishable is a conclusion. The law is perfectly clear in this case, and one man may think a thing is perishable and another may not.

THE COURT: Who, in your judgment, Colonel Anderson, was to determine that? Was that a justiciable question that had to be determined by the courts before it could be acted on by the Alien Property Custodian?

MR. ANDERSON: I think that this witness can state, and subject to my general objections I do not object to his stating, what property he sold, which is a matter of record, and therefore, the best evidence is the record evidence. I think he can state or it can be shown here what property was sold and the character of that property and then the question of the construction of the law, which,

of course, the witness is getting at, can be taken up by the Court. But if we are going into the sales of property, he can only show the fact that he sold certain property and the character of that property; and the best evidence of that is the record of the sales, and I object to any other evidence. If we are going into that question, let us get it right.

MR. KRESEL: I think, your Honor, the question was answered before Colonel Anderson made his objection. I may be mistaken. Of course, if it was, it may be stricken out for the purpose of your Honor considering it.

THE COURT: The question now is what?

(Q. 34 repeated as above recorded.)

THE COURT: I think the objection to that is well taken. You may take the answer under the general rule, if you want to.

MR. KRESEL: Will you answer the question, please?

A. No, I did not.

Q. 35. There was an amendment to the Trading with the Enemy Act pending before Congress in March, 1918. Did you in your official capacity have anything to do with proposing that amendment?

A. I prepared it, and under the direction of the President, submitted it to the Congress.

MR. ANDERSON: If your Honor please, what the witness did in his official capacity I will have to object to, and I move to strike out the reference to the direction of the President upon the ground that it is not responsive to the question. He was asked whether he had anything to do with the passage of that amendment in his official capacity. The only people who could pass that amendment was Congress; and if he had anything to do with it, assuming that the evidence is admissible at all,

which, of course, we do not admit, then he can state what he did. But he cannot go back into directions of other peole and what they communicated to him.

MR. KRESEL: Colonel Anderson forgets the form of the question. I did not ask this witness what he had to do with the passing of the amendment. I asked him whether he had anything to do with proposing the amendment.

MR. ANDERSON: He can state what he did, but the question of who directed him or how he was directed is not within the question.

MR. KRESEL: I consent to strike out the words "Under the direction of the President." I will bring that out by specific question .

THE COURT: Is the question as now amended objected to, Colonel Anderson?

MR. ANDERSON: Only the general objection, sir.

THE COURT: You may proceed, Mr. Kresel.

Q. 36. Prior to your proposing this amendment, did you have a conference about it with the President of the United States?

A. I did.

MR. ANDERSON: That is objected to.

THE COURT: Your general objection?

MR. ANDERSON: Yes, the general objection and I think the question is subject to further objection that if there were any written communications on this subject, they must be produced. But I do not know that the question quite called for that.

MR. KRESEL: The question has been answered, your Honor.

Q. 37. Please state your best recollection of the conference that you had with the President of the United States with reference to this proposed amendment to the Trading with the Enemy Act, giving the

date as near as you can of the conference. Do not answer until Colonel Anderson has an opportunity to object.

Mr. Anderson: If your Honor please, in addition to my objection as to its immateriality and irrelevancy and the further objection as to matters relating to the Act of Congress, which we claim is perfectly clear, I want to add the further objection that the Constitution of the United States provides the manner by which the President may communicate to Congress his wishes.

Unless such communication was made to Congress, it is of no materiality in this case, even assuming that it would be in that event, because what this witness may have known and what the President may have said to him or he may have said to the President, I take it, is a matter of no importance—assuming that that question can be gone into at all in this connection.

In the third place, if there was any communication of the wishes of the President to Congress, it must be addressed to Congress in a constitutional manner to have any effect upon Congress or to have the force of a communication by the President. If, therefore, it is intended to connect up the President with the passage of this Act, I respectfully suggest that the only means by which that can be done would be by producing the message or communication from the President to Congress.

I think that is of very great importance as a precedent. If we are going to inquire into the relations between Congress and the President, other than those official relations expressed in the message, I think we are going into a very broad field and a very dangerous field.

Your Honor may suggest and perhaps coun-

sel may suggest that the Government has in this case entered upon the inquiry as to the communications to the President, but they have only been as to the statement of facts upon which the President predicated the exercise of his discretion, and not beyond that.

As to the communications between the President and Congress, I think that they can only be inquired into, if at all, to the extent of official communications; and whatever the President may have said to this gentleman or whatever he may have said to the President is certainly immaterial here and I conceive that it has no possible bearing upon the case and I do not think it would be a proper subject of inquiry.

MR. KRESEL: Colonel Anderson entirely misconceives the purpose for which I am seeking to elicit this testimony. I am not seeking to elicit the fact that the President sent any message to Congress by Mr. Palmer. It is not the law that such messages must be in a certain way, even if I were trying to prove that. But that is immaterial.

What I am trying to show is that this officer who, according to the Trading with the Enemy Act, must at all times be acting under the direction and control of the President, reported the results of his investigations and what the administration of his office up to that time had taught him to the President, who was responsible for the administration of this Act, and discussed with him the necessity of having the Act amended.

What Congress did I shall show in a minute, but I am not seeking this information upon the theory that the President was, by means of Mr. Palmer, sending any message to Congress. I claim I have a right to show what information was con-

veyed to the President and what instructions were given by the President to Mr. Palmer.

THE COURT: The charge of the bill of complaint in this case and the position of the plaintiff in this case is that the President of the United States was misinformed, mislead, and in effect deceived with respect to the facts. It seems to me that under such allegations and charges the inquiry of the defendant, with respect to facts within the President's knowledge, should not be restricted to the particular facts but that it should be open to the defendant to show, if it so desires, the full nature and scope of the information with respect to the alien property that was within the knowledge of the President of the United States at any time prior to the execution by him of the orders of December 3d and subsequent orders.

I think the objection to this question is not well taken and you may take the answer.

MR. ANDERSON: Your Honor will allow an exception, of course.

THE COURT: An exception to all adverse rulings throughout the case will be understood to be reserved by either party.

MR. KRESEL: Mr. Palmer, will you proceed.

A. The date of the conference I cannot give exactly, but it was early in the month of March, 1918, immediately after the President had directly submitted to a committee of the Senate a proposed amendment to the Trading with the Enemy Act.

MR. ANDERSON: If your Honor please, that is certainly not responsive to the question.

MR. KRESEL: He is just fixing the time.

THE COURT: I understand that he is fixing the time and not attempting to prove the facts. It is simply an attempt on the part of the witness to fix the precise time, and has no other purpose, so

that it may be checked up by subsequent evidence in this case.

MR. KRESEL: That is the entire purpose.

MR. ANDERSON: Then I take it that counsel concedes that the submitting of any amendments by the President is not evidence of the facts stated therein, but merely for the purpose of connecting up this interview.

MR. KRESEL: What is that?

MR. ANDERSON: The statement by the witness that the President submitted to the Senate some paper or some recommendation, which, of course, was in writing, is not to be taken as evidence of that fact, because if he is going to testify what he submitted to the Senate in the way of an amendment, I want to see it.

MR. KRESEL: Colonel Anderson, I will say now that this mention by Mr. Palmer of the fact that the President had submitted to Congress something is not to be binding on you. It was mentioned simply to fix the time of this conference. Is that satisfactory?

THE COURT: You may complete your answer, Mr. Palmer.

A. (continuing) And I told the President that I had observed that he had sent down a proposed amendment to the Trading with the Enemy Act giving him the power——

MR. ANDERSON: That is in writing, is it not?

MR. KRESEL: This is the conversation he is telling now. Hasn't he a right to tell the conversation?

THE COURT: I understand the nature of your objection, Colonel Anderson. I will let you state it at length after Mr. Palmer has finished. I think it is not well taken. I think Mr. Palmer is relating conversation with the President and not

attempting to give primary evidence of written documents.

A. (continuing) ——to take over the Hamburg-American Line and North German Lloyd Line docks and terminals at New York and that it seemed to me that it was the proper time, in connection with that amendment, to have the Congress carry in the same appropriation bill, as that amendment was being proposed to the appropriation bill as a rider, another amendment which would give to the Alien Property Custodian the full and unrestricted power of sale of enemy property.

He called my attention to the fact that I had issued, immediately after becoming Alien Property Custodian, a public statement which I had submitted to him and which he had criticized and corrected; the statement finally going out in the form entirely approved by him, which statement had been to the effect——

MR. ANDERSON: As to that statement, I would like to have it produced.

MR. KRESEL: May this witness finish his answer, then Colonel Anderson make any suggestion?

MR. ANDERSON: But I must interrupt for the purpose of making an objection.

THE COURT: You are now identifying the statement to which he called your attention in this conversation?

THE WITNESS: I am detailing my conversation with the President, in which we recalled to each other what that statement was at the beginning.

THE COURT: Then you may proceed.

A. (continued) ——that the Alien Property Custodian was a mere conservator of these enemy properties, that the properties were being taken over by the Government, and would be managed and operated by

the Alien Property Custodian solely or chiefly because of the fact that their owners were under a disability growing out of the war conditions to provide for their own property, and giving assurance to the country that the property of Germans resident in the United States would not be touched, and that sales or transfers were not contemplated.

I told him that we were both agreed at the time that that statement was issued that that was not only what the act meant, but that is what our policy ought to be and would be, and that it had been my policy up to that time. And he then wanted to know what has caused me to desire a change in that policy or suggest a change in that policy. I told him that we had found out a great many things about German property since I had been in office, that no one had ever known or suspected before. I told him that, speaking in a broad and general way, the German property in the country naturally fell into two classes, in the one class was the private investment of the individual German subject in this country, who was led to invest his savings, generally in small amounts, in mortgages or other property in the United States, because he was satisfied that the opportunity for profitable returns upon his investment here was great, without any other thought than simply making a safe investment; that those investments constituted the majority in number of German holdings here but only a very small minority or a very small portion of the total amount; that the second and larger class, and far more important class of German investment in this country, my investigations had shown me to consist of investments made in more or less large amounts in commercial and industrial concerns in the United States, very frequently key industries of great importance, by interests in Germany of the same kind that we generally understood at that

time to be behind the war, the so-called junker class, and in many cases, my information was financed and actively supported and aided by the great German financial institutions; that many of these concerns were closely affiliated with all the powers that be in Germany, members of the royal family itself having made investments over here of a peculiar and interesting nature which I described to him, and that we had become convinced, I told him, that all this investment was in a sense hostile to American interests as a part of the deliberate plan of Germany to conquer the world by trade—it was an invasion of American commercial and industrial fields purely for the German benefit.

I told him that in addition to that I had found many of these industrial concerns, in fact most of them, were manned by Germans, frequently not naturalized citizens, sometimes naturalized; that we had run into cases where managers of these plants had been naturalized under written instructions from the Germany owners, in order to be more effective in their work; that many of them were even then what I called spy centers, filled with German propagandists and all of them would be sedition centers if they were allowed to continue in their present way.

I cited some instances. For instance, the German-American Lumber Company I recall as one example, a concern worth several million dollars, located in Florida on Pensacola Bay, in which a member of the royal house of Germany was a chief stockholder. He had never seen the property, he had never taken anything out of it, he had continued to increase his investment until his concern owned every advantageous place on the finest harbor in the Gulf of Mexico, the nearest harbor on American soil to the Panama Canal. When we took that plant, instead of finding its files filled with interesting and important data with reference to the lumber business, as we expected, we found

it was a mere storage place for Pan-German literature, a distribution center for propaganda in this country.

I called his attention to the fact that we had discovered other properties which were being similarly used, going into some detail. He asked me why I thought that even that was sufficient justification for changing our program and selling these properties instead of simply continuing to conserve them. I told him that my observation had been that practically all of these great properties that I was managing were profitable, most of them were profitable due entirely to war conditions, they were engaged in the manufacture of articles necessary for the war or whose price had been largely enhanced by the war conditions, and that it seemed to me, as I hoped it would seem to him and to the Congress, an absolutely unmoral proposition that the Government of the United States should at its own expense be carefully operating these great properties and making tremendous money, which would presumably be returned to their stockholders eventually, out of the very war for which the stockholders and their other friends in Germany were responsible.

It offended my sense of decency and justice, and I said I thought we would be doing all we would have to do if at the end of the war we made an accounting for the value of the properties as the Germans left them and as we took them over, rather than for the enhanced and tremendously increased values growing out of our management of the war and out of the war itself.

For instance, over in New Jersey the great textile mills were engaged in making millions and millions of dollars worth of army cloth, and practically all of them were making their money out of the war. Not only that, I told him, was I convinced was a good reason why we should convert these properties into money, but it seemed to me that the time had come when we had sensed the German program in its desire to conquer the

world, that what it was most anxious to do was to capture all the markets of the world and strengthen its foothold everywhere, and especially was that true of America, where it hoped to increase its commercial and industrial hold, that we could, it seemed to me, strike no more effective blow as a war measure than to do that which would give notice to Germany and to the powerful financial and industrial industries behind the Kaiser in the war, that no matter how many armies they might defeat, or how many French cities they might destroy, or how many countries in Europe they might overrun, one thing was gone, and their war had been lost on the American battle front, that they had separated from themselves forever all of these tremendously valuable properties in the United States which were, in their mind, the gateway, the entrance to a great expansion of German control of industry and commerce in the United States.

I told him from what I had been able to learn that was a matter of vital concern to Germany, what we were going to do with respect to these properties was being very seriously considered over there, and that the time had come right then in my judgment to strike a highly effective blow in the war. I called his attention to the fact that it was a time when every nation in the world was getting together every weapon it could lay its hands on to swat the Germans with, if I may use that term. It was the darkest hour of the war.

I referred to the fact of the conditions on the war front, with which, of course, he was entirely familiar, and we discussed them. It was about the time that General Haig had said that Great Britain was fighting with its back to the wall. I told him of the recent statement that Mr. Baker had made to me and to others.

Q. 38. Secretary Baker?

A. The Secretary of War—who, on returning from the front, told a party of twenty men at the house of

Mr. Hugh Wallace, who were gathered there for the purpose of listening to him, the very day he got back, that it was the general opinion of leaders of the allied forces in Europe, and it was his opinion that Paris was about to fall, and that the Channel ports would be turned. Although that was serious, he said he thought it was not fatal; but to the rest of us men of the Administration gathered there it sounded fatal. At any rate, it brought gloom to every countenance and distressed every heart.

That was the time when it was generally believed that things were at their very lowest. I asked the President to let me go down to the Congress and ask the Congress to hit the Germans where it would hurt, to strike a blow from which they knew they could never recover, and let them know right now, as an act of war, that we proposed to Americanize this property which they had.

He said he had come to the conclusion that that was the correct view to take of the situation; that his idea in asking for this amendment with reference to the Hamburg-American Line docks and the North German Lloyd Line terminals was that it would put into the Treasury a certain amount of money representing their value, put the title to the properties in the United States, so that when the United States finally got to the Peace Conference, it could be said that the matter of the sale was a closed incident, the money was in the Treasury, and they would negotiate with reference to the disposition of that, but they would not even consider the question of ever returning the docks and the terminals. He wanted to be in that position.

And with the understanding between us that the policy was to be changed in respect to these industrial and commercial and important properties in the United States, and that the private investment of the

individual German subject was to be left intact, so that if we wanted to, it might be returned in kind, I submitted to him the amendment which I proposed to the act. He acquiesced in it. He asked me to go down and submit it to the Congress and urge its passage.

Q. 39. Did you submit the amendment?

A. I did.

MR. ANDERSON. One minute, please. If your Honor please, I want to move to strike out this very interesting statement of the witness for the reasons already stated; for the further reason that much of it relates to matters in no way referring to this act, such as the Hamburg-American terminals, conversations with other persons and the President of the United States, statements of other persons which are purely hearsay and not evidence; but I will make objection to the end that I may reserve the point for future consideration, and that is, that in view of the fact that the President of the United States, and, as I take it, an ex-President of the United States, cannot be summoned into this court to testify, either under law or propriety, that a conversation with him is not evidence.

THE COURT: Colonel Anderson, I have been puzzled by this throughout. Will you help me? Then, is it possible to charge a President of the United States with ignorance, and by that charge convict him of it without an opportunity for denial?

MR. ANDERSON: No, sir.

THE COURT: Then, how would it be denied?

MR. ANDERSON: It would be denied in this way: that you could not in any proceeding, in my judgment, since you cannot call the President of the United States into a court, and, in my judgment, you could not call an ex-President to testify

as to any matter that occurred while he was President——

THE COURT: I think there is no doubt about that, Colonel Anderson.

MR. ANDERSON: If you could do it, you would not do it.

THE COURT: That does not call for an opinion. I think it cannot be done.

MR. ANDERSON: And, therefore, the only thing that could be produced in the event that the condition became such that it was necessary to show that the President was not informed, or was misled, would be written evidence of that fact, and the conclusions would have to be drawn from that written evidence or documents, and, of course, all the surrounding conditions.

I would suggest, and, therefore, present for the consideration of the Court, that conversations with the President of the United States are not, in any event, admissible. And I will say in that connection that but for the fact that we took the position that Mr. Polk was acting in a purely personal capacity and entirely outside of any authority of the President of the United States, as a matter of law, I should not have called Mr. Polk into court. I hope I have made myself clear.

THE COURT: Entirely clear.

MR. ANDERSON: And I may be unsound on it. I recognize that since the Burr case, so far as I know, the question has never arisen, and it is such a delicate question that I discuss it with great hesitancy; but I feel it my duty to raise the question.

MR. KRESEL: The question has arisen as to the power of the Court to summon the President into court. That is settled law.

MR. ANDERSON: No, I do not mean that. I

mean the question of matters concerning the President.

MR. KRESEL: And that question likewise has been discussed by the cases.

MR. ANDERSON: I do not recall it for the moment.

MR. KRESEL: The cases have uniformly held, as Mr. Guthrie in his argument pointed out to the Court, that the courts would decline to entertain jurisdiction of matters which the Executive had determined upon, which were, in his discretion, in the exercise of his authority.

MR. ANDERSON: That raises our entire argument, if your Honor please.

THE COURT: My difficulty with that, Colonel Anderson, is that it seems to me that a person who is subjected to a charge before a court, in any event should not be charged without the opportunity of a defence. It seems to me that the inevitable conclusion to be drawn from your contention and logic is that the only thing necessary to do to convict a President of the United States of acting without justification, without warrant, in ignorance, and by guess, is an allegation in a bill to that effect.

There is still doubt in my mind as to the power of the Judicial Department of the United States to review any act that is within the presidential discretion, assuming power to exist. I believe, notwithstanding my opinion, that a President or ex-President of the United States may not be summoned into a court to defend his acts, that when charged with an improper act, whether by the United States or not, there is no avenue or no character of evidence that has evidential value that may not be used under such circum-

stances to show that he did not so act. The motion to strike is denied.

(At this point a short recess was taken by direction of the Court.)

MR. ANDERSON: Will your Honor permit me. Your Honor made one statement which, I think, was inadvertent in the language used, but which might place myself and the plaintiff in a position which I have tried to avoid in this case, and that is, you said the President was charged with certain acts. I do not think the bill in this case, or any language which I have used in court, is capable of an interpretation that any charge has been made against the President of the United States in any way. It certainly has not been so intended. But the President, of course, is human, and in the manifold duties of his office, or any other officer, including this Court, might be misled as to the facts; and if such were the case, it might affect the legal effect of his action, just as this Court might be misled as to facts and would be subject to review or re-hearing before the Court. It is only in that sense that the President's name is used at all, and great care has been used not to even suggest that the President even knew of the matters which we claim affect this case.

THE COURT: I thank you very much for correcting any misstatement or any inference that might be a wrongful interpretation of the plaintiff's position in this case. But I was under the impression, Colonel Anderson, that the bill did charge——

MR. KRESEL: May I read it, your Honor?

THE COURT: I should be glad to have you.

MR. KRESEL: I read from the thirty-fifth paragraph of the bill:

"That the facts hereinbefore set forth and other facts necessary and essential in relation to said seizure and proposed and pretended sale of said patents, copyrights and other rights, and rights arising out of or incident thereto, sought to be confirmed and validated or authorized by said Executive order, were not disclosed to the President at the time of or before the signing of said Executive order and that the same was signed and issued upon an entire misunderstanding or mistake of facts which, if the same had been truly stated and known to the President, would have prevented his signing or issuing the said order; that said Executive order was not authorized by law, and that the same was and is for the reasons aforesaid and for other reasons, without force and effect to authorize, confirm, or validate the pretended sale or disposition of said patents, copyrights and other rights and rights arising out of or relating thereto, sought to be confirmed, validated and authorized by said Executive order."

THE COURT: Thank you very much, Mr. Kresel. It does charge a misunderstanding. I understand you fully, Colonel Anderson. I think the record fully and amply discloses that you charge no improper motives on the part of Mr. Palmer or any other Government officials, but that the bill does charge a misunderstanding.

I will, however, state an impression that I am gathering, and I will get you to answer it at a later time and not now, because I want to proceed with this testimony. I have not read Mr. Palmer's report at all. I have not had it in my hands. I know its contents only by what has been read to me and stated to me at the bar. But I am wondering, if it makes a full disclosure of the state

and condition of the alien property, particularly of the facts with relation to the chemical industry—and I have understood from such reading that it does—how there is actual fraud involved—I must use the legal term, because I have got to use it sooner or later and I might as well use it now—and if there is actual fraud involved, whether the grossest fraud, if fraud existed, is not upon the governmental officials who acted with knowledge rather than upon the representatives of the several companies that were engaged in the manufacture or sale of dyes and chemicals? For, in the one case, that is, the Government officials, it seems to me that probably they acted with full knowledge, and in so acting, they acted in breach of trust, while the representatives of the dye and chemical industry only attempted to have them so act.

I am afraid I have stated that rather crudely and in such a way as to indicate that I have an opinion with respect thereto, while, as a matter of fact, I have only tried to indicate that my impression now is that if the Government succeeds in establishing fraud in this case and a full disclosure of the facts before the Government officials acted, the inevitable conclusion of the Government's contention would be that the grossest fraud would be on the governmental officials rather than on the persons engaged in the industry.

I will hear you at any time after this morning that you desire to be heard on that.

MR. ANDERSON: I will be glad to reply to your Honor's suggestion whenever it suits your Honor, but I do not care to do it now. I think I get your Honor's idea, and when I take it up, if I do not develop it, your Honor will make it clear.

THE WITNESS: I would like to explain that while, as I said, I had the interview with the President before the amendment was submitted, he and I discussed the matter upon other occasions up to the very time the bill was signed which carried the amendment into law, and what I have here said as to the conversation between us may not all have happened the first time. That is what I wanted to say.

Q. 40. When this amendment which we talk of here, Mr. Palmer, in the case as the March, 1918, amendment, was before the committees of Congress, did you appear and testify before the Senate Committee that had charge of the bill-

A. I did.

Q. 41. That was the sub-committee of the Committee on Appropriations of the United States Senate?

A. Yes, sir.

MR. KRESEL: Without stopping, your Honor please, to read any portion thereof, I offer in evidence the official report of the testimony of Mr. Palmer before that committee, which was delivered by him on March 7, 1918.

THE COURT: The same committee before which Mr. Bradley's statement was made?

MR. KRESEL: No, your Honor; Mr. Bradley's statement was with reference to an entirely different amendment. That was the amendment of November, 1918.

THE COURT: Yes, and this is of March.

MR. KRESEL: March, 1918.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 31." (*See Exhibits, Vol. IV, page 2228.*)

Q. 42. Mr. Palmer, when the amendment was orig-

inally presented to Congress do you recall whether it contained what now appears therein namely, the provision with reference to sales at public auction, the provision with reference to the exception which says that the sales were to be at public auction unless the President, in the public interest, stating his reasons therefor, should otherwise direct? Do I make myself plain as to that?

MR. ANDERSON: I object in addition to the general grounds stated that if there was any such amendment presented to Congress it was in writing, and that is the best evidence of what it contains. I would like to see it.

THE COURT: Does not your inquiry call for the bill as presented rather than the recollection of the witness with respect thereto?

MR. KRESEL: Your Honor, I do not happen to have before me the bill as presented; and, of course, this witness has not a copy, he is no longer in possession of the record. I will put in a copy of the bill as originally presented, and with that promise is there any objection to my proceeding?

MR. ANDERSON: Not at all, it being understood it is merely leading up to that.

MR. KRESEL: Yes.

THE COURT: All right, you may answer the question, then.

A. No, it was not in the original amendment.

MR. KRESEL: I now offer in evidence a resume of extracts from the proceedings before Congress, showing the history of the amendment, how it was originally proposed, how it was amended on the floor of the Senate, and how it was subsequently amended in conference between committees of the Senate and the House.

THE COURT: Taken from what, Mr. Kresel?

MR. KRESEL: Taken from the Congressional Record.

MR. ANDERSON: In addition to the objection made, I will have to call for the production of the original record; because there must have been a good deal of discussion on that subject, and I do not think a resume of that discussion would be fair to the plaintiff here if this evidence is going to be considered at all. We must know what Congress considered.

THE COURT: Are these extracts copies or restatements?

MR. KRESEL: No, sir; they are copies from the records.

THE COURT: Then is Colonel Anderson's objection to the fact that those extracts are taken from the Congressional Record, or is the objection that those extracts are not all of them matters pertaining to the same matter?

MR. KRESEL: I understand the objection to be that it is not all pertaining to the matter. The same rule applies to Colonel Anderson as applied to me. He may put in anything else he pleases.

MR. ANDERSON: Very good. Has counsel the record here?

MR. KRESEL: We will produce it, yes. We have not the record here in court; we have been using copies.

MR. ANDERSON: If counsel can produce the record, as we have not it here, to the end that we may use it in cross-examination or to the end that we may put in other parts of it at the appropriate time on rebuttal——

MR. KRESEL: Certainly.

MR. ANDERSON: I will not raise the question of primary and secondary proof, because we are proceeding under an agreement.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 32." *(See Exhibits, Vol. IV, page 2263.)*

MR. KRESEL: I will direct your Honor's attention to but two paragraphs of this in the Congressional Record of the Sixty-fifth Congress, bound volume, page 3328, under date of March 11, 1918. It appears that while this bill was before the Senate, on the floor of the Senate, Senator Frelinghuysen offered the following amendment, which was adopted by the Senate, namely, to add to the bill as it was then before the Senate the following sentence: "And provided, further, That any property, other than that sold to the United States, sold under this act shall be sold at public auction to citizens of the United States only and to the highest bidder."

I also read from bound volume page 3942 of the Congressional Record an extract showing that after the disagreement between the House and Senate, the bill having been refererd to conference, the Conference Report made to the Senate, which was Senate Document 204, shows that this phrase was added to the bill in conference, namely, "unless the President, stating the reasons therefor, in the public interest shall otherwise determine."

THE COURT: Where was that added?

MR. KRESEL: In conference.

THE COURT: In conference?

MR. KRESEL: Yes, your Honor. On the same day, that is March 23, 1918, when the Conference Report was presented there was debate on the bill in the Senate, and Senator Gallinger directed his remarks with reference to these amendments, and he said:

"Did I understand the reading of the conference report correctly, that, notwithstanding the provision is for public sale, the President may order the property sold otherwise? If so, I should like to know why that provision is modified to that extent?"

And Mr. Underwood, who had the bill in charge, made this reply: "I was coming to that. The only modification in that respect is that it does not leave everything to the Alien Property Custodian. The proposed change is 'when the President shall "determine," ' not 'prescribe.' As I understand, when we provide that the President shall 'prescribe,' he may make rules and regulations, but the change here is that 'when the President shall determine,' which will require the personal act of the President. That change has been made because there may be conditions arise in the disposition of this property where it would be impossible to sell it at public auction without it possibly going into the hands or control of alien enemies or persons who are unfriendly. The committee of conference thought that was wise and that it was within the line of the original bill as it passed the Senate, because when the alien property act originally passed the Senate there was no limitation whatever. Now, this merely gives the right to the Alien Property Custodian in an exceptional case to appeal to the President to allow a certain portion of such property to be sold not by public auction but by negotiation. Then the President must indicate in writing why he has done so. I think the situation is thoroughly guarded from the standpoint of the Senator from New Hampshire."

The same volume of the Congressional Record shows that the Conference Report was not voted on on that day, and that on March 23, 1918, the Conference Report No. 405 was made in the House, and that there was debate in the House on the matter March 26, 1918, and that the Conference Report was finally adopted on March 26, 1918.

MR. ANDERSON: May I state in regard to Exhibit No. 32 that I do not object to the paper as introduced, but I would like to have it understood that the parts underscored are not to be printed in italics.

MR. KRESEL: No, of course, not.

MR. ANDERSON: Because I have known that to be done, and it has caused a great deal of confusion. I once had to make up an entire record over on that account.

THE COURT: It will be so understood.

MR. KRESEL: I now offer in evidence the following Executive orders issued by the President, dealing with the carrying out of the Trading with the Enemy Act.

MR. ANDERSON: Are they in that book?

MR. KRESEL: Yes.

MR. ANDERSON: We agreed that either side could use it.

MR. KRESEL: No; not these particular Executive orders. What we agreed was that the Executive orders with reference to sales could be used; but I now propose to put in specific Executive orders issued by the President with reference to the administration of the act. Some of them I think you did put in, but these you did not.

MR. ANDERSON: There is no objection to any of them. The only question was whether we had agreed according to the record.

THE COURT: My recollection corresponds with yours, Colonel Anderson, that anything in that booklet might be read by either party at any time.

MR. ANDERSON: And if it will save time, we agree to it now.

MR. KRESEL: May I, then, simply indicate on the record that I desire specifically to have in evidence the following Executive orders, to wit: The Executive order of February 26, 1918; the Executive order of April 2, 1918; the Executive order of July 15, 1918; the Executive order of July 16, 1918; all of which are printed in this booklet which contains Plaintiff's Exihbit No. 1, and is entitled "Trading with the Enemy Act."

MR. ANDERSON: Now we agree, sir, that they may be used upon the trial, re-trial or argument of this case on appeal; with the same effect as if they were in evidence, without being printed in the record.

THE COURT: And subject to all the objections.

MR. ANDERSON: And in accordance with the same stipulation that we made before covering this subject.

Q. 43. With reference to the Executive order of July 15, 1918, Mr. Palmer, did you write to the President this letter, dated July 11th, of which I show you a copy?

A. I did.

MR. KRESEL: I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 33." *(See Exhibits, Vol. IV, page 2272.)*

Q. 44. With reference to the Executive order that was made by the President under date of July 16, 1918, did you write a letter to the President under date of July 11th, a copy of which I now show you?

A. I did.

MR. KRESEL: I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 34." *(See Exhibits, Vol. IV, page 2272.)*

MR. KRESEL: I desire to read this, your honor. (Reading.)

Q. 45. Mr. Palmer, with reference to the gentlemen who constituted the Advisory Sales Committee, statement has been made here by me that they were appointed by the President. Will you state what the fact is about that?

MR. ANDERSON: Same objection.

A. There were no appointments in writing, but the President asked me to convey to them his requests that they should serve the Alien Property Custodian in that capacity.

Q. 46. And did you convey that?

A. I did.

Q. 47. And did the gentlemen accept the appointment?

A. They all accepted.

MR. KRESEL: I also desire to offer in evidence a statement by Senator Underwood on the floor of the Senate, made March 11, 1918, at a time when this March, 1918, amendment was before the Senate, the statement being found at page 3593 of the unbound Congressional Record under date of March 11, 1918.

MR. ANDERSON: That is, of course, subject to all objections.

THE COURT: I understand nothing is being offered on either side that is not subject to objection and exception.

MR. KRESEL: I enclose the portion that I refer to within blue pencil marks.

Received in evidence and marked "Defendant's Exhibit No. 35." *(See Exhibits, Vol. IV, page 2273.)*

Q. 48. Subsequent to the passage of the March, 1918, amendment and these Executive orders issued by the President and the organization of your sales force, did you sell a large amount of German-owned property?

A. I did.

Q. 49. In connection with your program of selling, was the question of German-owned patents brought to your attention?

A. It was.

Q. 50. How? I mean in what connection your attention was first directed to that feature of the administration of alien property?

A. One of the first properties that my sales organization had ready to sell—and it was a considerable chore to get these properties in shape to be sold—was the Bosch Magneto Company, and my attention was immediately called to the fact, when we began to consider advertising that property for sale, that a very important part of its assets was the right to do business under certain patents, which, however, did not belong to the Bosch Magneto Company, but the title to which seemed to be in the name of Robert Bosch, of Stuttgart, Germany, the same person who held the title to nearly all of the stock of the Bosch Magneto Company, who had been permitting the Bosch Magneto Company, an American corporation, to use his patents. We saw immediately that if we expected to get a purchaser for the Bosch Magneto stock we would have to find some way to dispose of the patents at the same time to the same purchaser.

Q. 51. While that particular piece of property brought the patent question pointedly before you, were there other enemy properties under your care in

patents. That was my opinion, and I urged it very strongly.

Q. 59. In that connection did you have patent counsel in your office?

A. Yes.

Q. 60. Who was he?

A. Mr. Ramsay Hoguet, of New York, was the Chief Patent Counsel.

Q. 61. Did you take his advice upon this question as to whether the Alien Property Custodian had the right to seize enemy patents?

A. I did.

Q. 62. And did you get an opinion from him in writing?

A. I did.

MR. KRESEL: I offer in evidence this opinion from Mr. Hoguet.

MR. ANDERSON: In addition to the general objection of immateriality and irrelevancy, I make the specific objection that the orders already introduced show that the Alien Property Custodian acted under the advice of the Attorney General of the United States, and that his opinion is the only opinion that could be a guide to the Alien Property Custodian in matters of his authority, and therefore it matters not what opinions he may have gotten from other counsel as to matters of this kind. The Attorney General's opinion was the only one controlling.

MR. KRESEL: I am bringing that out only in answer to the allegation in the bill that the Alien Property Custodian entertained the opposite opinion; that is all. Of course, I shall show in a minute that the Alien Property Custodian, because of the difference of opinion, submitted the matter to the Attorney General and, of course, followed his advice.

MR. ANDERSON: Then how could this opinion have any relevancy?

THE COURT: My difficulty is twofold: First, as to whether the several opinions that Mr. Palmer got are relevant, when he has told us what his opinion was; and second, if he did get other opinions, whether that fact is all that may be inquired of and not the reasons upon which the conclusions of Mr. Hoguet were based.

MR. KRESEL: May I suggest, as to your Honor's first difficulty, I think I can resolve that by pointing to the bill, which says that not only the Alien Property Custodian, but also others charged with the administration thereof, held this contrary opinion.

THE COURT: Objection overruled. Admitted.

Received in evidence and marked "Defendant's Exhibit No. 36." *(See Exhibits, Vol. IV, page 2275.)*

Q. 63. I also show you a copy of another communication from Mr. Hoguet, addressed to Lee C. Bradley. Was he your general counsel?

A. General counsel.

Q. 64. And ask you whether that is another opinion rendered by Mr. Hoguet upon this question under date of September 25, 1918?

A. Yes. That was more in the nature of a brief to be presented to the Department of Justice, stating the position of the Alien Property Custodian's office, and arguing for it.

Q. 65. Which one do you mean, this last one?

A. This last one.

THE COURT: Same objection, I assume, Colonel Anderson?

MR. ANDERSON: Yes, same objection, and some in addition.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 37." *(See Exhibits, Vol. IV, page 2285.)*

Q. 66. On the 10th of August, 1918, did you write this letter to the Attorney General of the United States, submitting this question that we are now discussing to him for an opinion (handing paper)?

A. Yes, sir.

MR. KRESEL: I offer that in evidence.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 38." *(See Exhibits, Vol. IV, page 2300.)*

Q. 67. The opinion of the Attorney General was that you had no right to seize patents, was it?

MR. ANDERSON: Can we not get that opinion?

MR. KRESEL: I do not need it. You allege in your bill that that was the opinion of the Attorney General. I am not going to encumber the record with unnecessary documents.

THE COURT: You object to his quoting the allegations of your bill?

MR. ANDERSON: I do not, sir; I will stand by the allegations of the bill; but, with the greatest deference to the witness, I am not so sure I would want his testimony on it.

THE COURT: If his answer is not satisfactory, you may have a right to challenge it. So you may take the answer.

Q. 68. Will you answer it?

(Q. 67 repeated as above recorded.)

A. It was.

Q. 69. Do you remember, Mr. Palmer, that in the fall of 1918 there was pending before Congress an amendment to the Trading with the Enemy Act covering patents, trade marks, copyrights, which subse-

quently became a law and is known as the November 4, 1918 amendment?

A. I do.

MR. ANDERSON: One moment. If the Court please, in addition to the usual objection, the question asked him if he remembered that there was an amendment pending before Congress to the Trading with the Enemy Act. Up to that point, if he remembers it, I presume he could testify; but it goes on to say what the substance of the amendment was and what the law subsequently passed was. As to both, I respectfully suggest that the only evidence that is proper is not in the form of question of counsel, but is the act itself.

THE COURT: I assume that the question is merely to direct the witness's attention to a specific amendment and not to place a construction upon it.

MR. KRESEL: Simply to identify the amendment.

THE COURT: You may take the answer.

MR. KRESEL: He has already answered.

Q. 70. Did you personally, or did your office, that of Alien Property Custodian, have anything to do with proposing that amendment?

A. It was drafted in my office and was presented to a committee of the Congress at my direction by Mr. Lee Bradley, I think, who was general counsel.

Q. 71. General counsel for your office?

A. General counsel for the Alien Property Custodian.

Q. 72. Do you know whether, before the amendment was proposed that was finally passed, known as the November 4, 1918, amendment, you or your office had urged a similar amendment which had failed of passage?

A. I had personally urged the passage of such an amendment before the committee.

Q. 73. And will you state the month when that was pending before Congress?

A. I think it was before the Committee on Interstate and Foreign Commerce of the House early in June, 1918, I think June 4th, in support of a long amendment which we had prepared and which we were urging that committee to put on to the Trading with the Enemy Act.

Q. 74. After the amendment passed through Congress (I am now speaking of the amendment that is known here as the November 4, 1918 amendment), and while the amendment was before the President for his approval, did you write to the President a letter, of which this is a copy (handing paper)?

A. I did.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: Isn't that already in?

MR. KRESEL: I have never seen it. And I might say, gentlemen, if I offer any instrument which it is your recollection is already in, please call my attention to it.

MR. ANDERSON: We will do so.

MR. KRESEL: I read two paragraphs, if your Honor will permit me, of this letter. It is dated October 31, 1918. (Reads from exhibit.)

My attention is called to the fact that this letter is already in evidence as Plaintiff's Exhibit 10. With the Court's permission, therefore, I would like to recall this letter.

THE COURT: It will be withdrawn.

MR. KRESEL: So that Defendant's Exhibit No. 39 is withdrawn. And it may appear that I was reading from Plaintiff's Exhibit No. 10.

Q. 75. Prior to the approval of this November 4th amendment by the President, did you have any

conferences with the Federal Trade Commission or any member of that body as to the effect of this proposed new law with reference to the administration of enemy patents as between the Federal Trade Commission on the one hand and the Alien Property Custodian on the other?

A. Prior to the amendment being passed?

Q. 76. Yes.

A. Yes, I think I did.

Q. 77. Who representing the Federal Trade Commission conferred with you about it?

A. Chiefly Governor Fort, who I think was then chairman, I am not certain, and Mr. Victor Murdock. They changed their chairman every year, and I cannot remember now who was chairman, but members of the Commission.

Q. 78. Will you state the views urged by Governor Fort on behalf of his Commission, with reference to the powers of that Commission over enemy patents and the views that you expressed to Governor Fort with reference to the same subject?

Mr. Anderson: If your Honor please, I think it appears in evidence that there is certain correspondence between Mr. Palmer and Governor Fort. But Governor Fort is dead, and I do not think that conferences or conversations between Governor Fort and the witness are evidence in any event, because he was not subject to the jurisdiction of the Federal Trade Commission, and whatever conferences they might have had about the duties and scope of the Federal Trade Commission were not matters he had to deal with, but were fixed by law. In the next place, what Governor Fort may have said as to the scope, the powers and duties of the Federal Trade Commission is not evidence, and especially are these conversa-

done. The Government pursued that same course when they offered particular Executive orders.

THE COURT: The suggestion is adopted.

MR. ANDERSON: That suggestion is entirely agreeable to us, with the understanding of course that in view of the change of status, we will have a chance to go over the book and indicate at some time during the trial what amendments we desire to go into the record.

MR. KRESEL: There will be no objection.

THE COURT: You may have that opportunity.

Executive Order Dated February 26th received in evidence and marked "Defendant's Exhibit No. 32-A." (Same as Plaintiff's Exhibit No. 690. *See Exhibits, Vol. III, page 1778.)*

Executive Order dated April 2nd received in evidence and marked "Defendant's Exhibit No. 32-B." (Same as Plaintiff's Exhibit No. 691. *See Exhibits, Vol. III, page 1788.)*

Executive Order dated July 15th received in evidence and marked "Defendant's Exhibit No. 32-C." *(See Exhibits, Vol. IV, page 2270.)*

Executive Order dated July 16th received in evidence and marked "Defendant's Exhibit No. 32-D." (Same as Plaintiff's Exhibit No. 5. *See Exhibits, Vol. I, page 29.)*

By MR. KRESEL:

Q. 79. Mr. Palmer, I shall repeat to you the question which remains unanswered: Will you state the views urged by Governor Fort on behalf of his Commission, with reference to the powers of that Commission over enemy patents and the views that you expressed to Governor Fort with reference to the same subject.

A. Before the amendment of November 4, 1918, Governor Fort took the position that patents were not property and the Alien Property Custodian could not demand and take them over. After the Attorney Gen-

eral had decided that patents were not property and could not be taken by us, we prepared the amendment and then discussed the administration of the new law with Governor Fort and other members of the Federal Trade Commission.

Q. 80. Will you give the other names so that the Government may know with whom?

A. Well, I remember particularly Governor Fort and Mr. Murdock. I think possibly on one or two occasions another member of the Commission sat in, but I would not like to say who it was, because I had many subsequent conferences with the Commission. I may get them confused. I know that Fort and Murdock were both present at practically all of those conferences. Their position was that the method of administering enemy patents under Section 10 was right, and that it should be interfered with just as little as possible by our administration of the amended law.

They insisted that they should have the right to continue to issue licenses for enemy-owned patents. They even insisted at one time that they should have the right to issue licenses on patents owned by American corporations in which the enemy held a majority or controlling interest, which of course I very vigorously opposed because those corporations were under my control and were American citizens; and I insisted that they had no right to issue such licenses.

When we came to working out our plans they opposed every suggestion I made looking to a seizure and sale of the patents chiefly because they expressed the fear that it would result in a continuance of the patent monopoly in American hands and the people would be no better off than they had been theretofore under the patent monopoly in German hands. They insisted that under Section 10 they could issue non-exclusive licenses and build up competitive industries, and especially Mr. Murdock had very strong views on the whole

question of patent monopoly, and he welcomed the opportunity which this act seemed to give him and the Commission to break up the patent monopolies by the issuance of non-exclusive and competitive licenses.

I would say in a word that their view was that the Federal Trade Commission should be continued with such power that the amendment would have been practically of no effect, whereas my position was that the amendment was the law and we had to carry it out, and their powers should be subordinate to it.

Q. 81. Did you, on the first of November, 1918, receive from Governor Fort a letter enclosing a proposed Executive order—that is, proposed by Governor Fort—with reference to the administration of alien patents under this new amendment of November 4, 1918, that was then before the President for his approval?

A. I did.

Q. 82. And is what you have in your hand a copy of such letter and proposed Executive order?

A. It is.

MR. KRESEL: I now offer in evidence Governor Fort's letter with the enclosure.

THE COURT: Admitted, subject to the general and specific objections heretofore indicated by the Government with respect to other evidence and documents.

Received in evidence and marked "Defendant's Exhibit No. 39" and "Defendant's Exhibit No. 39-A." *(See Exhibits, Vol. IV, pages 2302 and 2305.)*

MR. ANDERSON: Mr. Kresel, do you know where the original of that enclosure is?

MR. KRESEL: No, I do not. The letter, if your Honor please, is not very long, and I think I had better read it to your Honor. This is dated

November 1, 1918. (Reads Defendant's Exhibit No. 39.)

MR. KRESEL: In order that the reading may be intelligible, I will read paragraph 1 of this proposed Executive Order.

THE COURT: May I make this inquiry: This proposed Executive order was the one suggested by Mr. Murdock or who?

MR. KRESEL: Governor Fort.

THE COURT: Governor Fort, after the passage of the second amendment of November 4, 1918?

MR. KRESEL: Of November 4, 1918. And I shall show—I may anticipate; this will serve to clarify the situation—I shall show by Mr. Palmer that after this Executive order was proposed, the matter was presented by both gentlemen to the President, and that the Executive order of December 3, 1918, was the result. But I think your Honor should have the views of both.

THE COURT: Yes; that helps me to understand what you are reading.

MR. KRESEL: Paragraph 1 of this proposed order reads as follows (reading). I now proceed with the reading of the letter (reading). Now I will read simply the proviso which the Governor refers to. It is this (reading). I think that is all that I need read with reference to that.

Q. 83. Before I leave the subject of your conferences with Governor Fort, I want to ask you specifically whether in those conferences you and Governor Fort discussed the situation in which the American industries were placed by reason of these alien enemy patents?

A. Yes, we did.

Q. 84. And upon the desirability of relieving the American industry from those incumbrances, I under-

stand there was no difference of opinion between you and Governor Fort?

A. None whatever.

MR. ANDERSON: Not quite so leading, Mr. Kresel, please.

Q. 85. Did Governor Fort mention to you a report made to him by Mr. Edward S. Rogers?

A. Well, he said that he had reports from some of his experts in the Commission relative particularly to the effect upon the American industry of the German patents on dyes and kindred things; but whether he mentioned Rogers's name to me, I do not remember. I afterwards learned of the Rogers' report, but I cannot say that he told me it was Rogers who made it.

MR. KRESEL: Colonel Anderson, I want to offer this report to Governor Fort by Edward S. Rogers, who was with the Federal Trade Commission at the time when the report was made. If there is any question about Mr. Rogers' position, I promise to prove that he was with the Federal Trade Commission and assisted them in the patent situation.

MR. ANDERSON: I never heard of him.

MR. KRESEL: That is the report. I want to offer it.

MR. ANDERSON: If your Honor please, there is no disposition on the part of the Government to object to any copies of papers, because we are working on that basis. But I have never seen this paper and I do not think it can be admitted in this case unless it can be proved to have been submitted to Governor Fort and to have been the basis of some action on his part, and also to have afected the issues in this case. I do not see how it can. I do not know where it came from. It is not even signed. It does not appear to be addressed to anybody. It appears to be a memorandum for

Governor Fort and that is all. I do not know whether he ever saw it. I do not think we could admit that paper as evidence of the facts contained therein in this case.

I am perfectly willing to admit, if any reasonable evidence can be produced, that the report was submitted, but I do not think we could fail to object to the admission of it as proof of the facts contained therein, as the record stands.

MR. KRESEL: I have already stated that if the Government declines to stipulate that Mr. Rogers was in the employ of the Federal Trade Commission at this time—that is dated January 16, 1918—I shall prove it.

MR. ANDERSON: I do not question the fact, but I would like to satisfy ourselves. I do not question counsel's statement. I assume he has spoken from hearsay too. I would not object on the ground of its not being primary evidence, or that that does not prove that this gentleman was in the employ of the Federal Trade Commission. I am willing to let it go on the record in any way that that can be established, but my objection goes to other phases of the matter which I have indicated.

MR. KRESEL: I am going to address myself to the other phases that you have indicated.

It being established that this man was in the employ of the Federal Trade Commission, here then we have a report made by him to the Chairman of the Commission, Governor Fort, and we claim, and we agree with the Government, that any report, any official report, is admissible here, as the Government contended with reference to another Federal Trade Commission report as proof of the fact.

For instance, your Honor will recall that Colonel Anderson read here from a report of the

Federal Trade Commission a portion as to the amount of money that it cost the Federal Trade Commission to administer these licenses for a particular year; and I was very careful to inquire of Colonel Anderson at that time whether he was claiming that that was admissible evidence as proof of the facts therein contained, upon the ground that the statement was contained in an official report, and he took the position broadly and said that was exactly what he was contending.

Now I have here the report made by an official of the Federal Trade Commission to that Commission.

THE COURT: As I understand Colonel Anderson's objection, he questions that, and says in effect that you have not shown that, the report was ever made, in fact, by Rogers to the Federal Trade Commission. That is my understanding of his objection. If I am in error, he will correct me.

MR. ANDERSON: Your Honor has substantially stated my position.

MR. KRESEL: Very well then. I now say that I shall prove that this report was made by Mr. Rogers to Governor Fort of the Federal Trade Commission, and that Mr. Edward S. Rogers was at that time an official of the Federal Trade Commission. Now, have I met the requirements? If I do not prove it, of course it goes out.

THE COURT: But is there this further point in Colonel Anderson's statement, namely, that the connection of the Federal Trade Commission is not here relevant or material, and only such facts as came to the knowledge of the Alien Property Custodian, Mr. Polk, the President, or Mr. Garvan are here material.

MR. ANDERSON: There is one other suggestion in order that counsel may address himself to it.

I think that an official report, made under the law to Congress, such as a Federal Trade Commission report is *prima facie* proof of the facts contained therein, subject of course to being modified or disproved. But this is merely a communication by a gentleman, whom I have never heard of, and I do not question at all that he is the man to whom Mr. Kresel refers, and I am not going to require any technical proof on the subject if we can agree on the facts. But this is a letter addressed by him to one of the members of the Federal Trade Commission and is not in the true sense an official report within the meaning of the law, as I take it. I do not know where it came from. I do not know anything about it.

Therefore, I think that there would have to be very definite proof, and I doubt then if it would be proof of the facts contained therein, unless the gentleman were called here, Mr. Rogers, who I assume is alive, and put on the stand so that his knowledge might be tested.

THE COURT: I do not understand you, Colonel Anderson, because it seems to me that is a repudiation of your concession a moment ago. I assume, of course, that it is not.

MR. ANDERSON: No, sir, not so intended.

THE COURT: That is, if this is an official report, I rather understood you a moment ago to say that then it proves itself, or rather it is proof of the facts therein stated, and I understand you now to be questioning that.

MR. ANDERSON: No, sir, I have tried to make myself clear and I am sure I am not very clear. The question of this man being an employee of the Federal Trade Commission at that time—in whatever capacity—I think we can get by with a mutual concession. If it is proved that this report was

made to Governor Fort and actually reached him, etc., that I will facilitate in every possible way I can. But we come then at last to the question if this was an official report as required by law, by either an officer or an official of the Government in the discharge of his duties, though how far that doctrine will go I am not prepared to say, it might be contended that it proved the facts therein contained in a prima facie manner. Glancing at the first few lines of the report it is a discussion of conditions in a certain industry in the United States.

MR. KRESEL: And at the end of it there are certain suggestions as to what should be done.

MR. ANDERSON: I do not know that this gentleman had any knowledge from which he could write of things of that kind, or that came within the duties of his office in any way, and therefore within the nature of an official report or clearly within the scope of an official body, as required by law. Therefore I think if those facts are going to be proved as facts, as to the condition of the industry in the United States, of the dye industry, I should be able to examine into the sources of this gentleman's information and his qualification to speak on that subject. I might write a letter from hearsay on the conditions of an industry, the steel industry, and it would mean nothing.

THE COURT: If this is an official report, it either is or is not primary evidence of the facts therein contained.

MR. ANDERSON: I think this particular kind of report is probably not primary evidence of the facts, because of the peculiar circumstances I have outlined. I do not know as I have made myself very clear, but I hope I have.

THE COURT: Yes, I understand. What do you undertake to prove?

MR. KRESEL: I shall prove, your Honor, that this gentleman was in the employ of the Federal Trade Commission, had charge of what was known in the Federal Trade Commission as the Enemy Trade Division, and he had charge of issuing these licenses. This is a report made by him in his official capacity to the chairman of the Commission, in which he reviewed certain facts and ended up by making certain recommendations to the Commission.

THE COURT: Are you going to trace the information therein contained not only to Governor Fort but to Mr. Palmer and to the President, or to any of them?

MR. KRESEL: I have already asked Mr. Palmer——

THE COURT: Yes, but he has not stated that the information he got was the information therein laid down, has he?

MR. KRESEL: He has stated that the name of the writer of the report was not mentioned to him, or at least he does not recall it.

THE COURT: I do not gather that from his testimony.

Q. 86. Mr. Palmer, in the course of your discussions with Governor Fort, did you discuss with him the general question of the effect of the German patents upon American industry?

A. I did.

Q. 87. Did Governor Fort indicate to you that his office, that is, the Federal Trade Commission, had been making any investigations upon the subject?

MR. ANDERSON: If your Honor please, I know your Honor's ruling on that subject, but I do think the questions in this case, if they are of any im-

portance at all here, should follow the rules of evidence and ask what was said or what was done about a certain matter. I do not think counsel ought to put (I do not want to put it in an unpleasant way)—to put the question in such a way that it puts on the record facts that he desires to be there with a yes or no answer. While I recognize your Honor is rather liberal on that point, in the particular cases I do feel that we ought to follow the rules of evidence.

THE COURT: It seems to me that the prohibition against leading questions was laid down to obtain certain results; and that the nature of this suit is such that it challenges the existence of the power exercised by the Alien Property Custodian, by Mr. Polk, and by the President, challenges the knowledge of each of those persons with respect to the facts as to which they acted, and that it also challenges the sufficiency of the reasons for their actions. It seems to me that the reports, the contents of which came to the knowledge of those persons, or any of them, are available and admissible in evidence to show the information on which they acted. On your undertaking heretofore made and in your understanding of this testimony that the contents of this report were communicated to Mr. Palmer, it is admitted subject to the general and specific objections of counsel for the Government.

MR. KRESEL: Very well, your Honor.

Received in evidence and marked "Defendant's Exhibit No. 40." *(See Exhibits, Vol. IV, page 2306.)*

MR. KRESEL: I shall not stop to read that now, your Honor. It is rather lengthy.

MR. ANDERSON: What is the date of it, please, Mr. Kresel?

MR. KRESEL: January 16, 1918.

Q. 88. Referring now to Governor Fort's letter to you of November 1, 1918, with which he enclosed a proposed executive order, I read the last paragraph of his letter, wherein he says: "Of course, I do not know the views of the President on this matter, and would therefore prefer if you apply for the order in my absence that you should show this letter to him, but if larger power than this is asked, the Commission would like to be heard." Having that in mind, I ask you whether you sent to the President any proposed executive order in this connection?

A. I either sent it or took it.

Q. 89. Did you have a conference with the President about such Executive order?

A. I did.

Q. 90. Was Governor Fort present at the conference?

A. He was present at the conference?

Q. 91. And at that conference did you state your views about the matter, and did Governor Fort state his views about the matter?

A. Yes.

Q. 92. I now show you Executive order made by President Wilson and dated December 3, 1918, and ask you to state whether after that conference at which you and Governor Fort were present the President made that Executive order upon this subject?

A. He did.

Q. 93. Please look at that Executive order and state whether it is in the form that you proposed it, or whether the President made any changes therein?

A. It is as I prepared it, with the exception, I think, that in Paragraph V in the draft submitted to the President, the name of the person in whom the power and authority of the President were to be vested was blank. One other change was made by the

President, and that was the addition of the last sentence.

Q. 93. (Continued.) In the order?

A. (Continued.) Which is: "Nothing in this order shall nullify or impair any license heretofore granted by the Federal Trade Commission pursuant to the provisions of Section 10 of an Act of Congress entitled 'An Act to define, regulate and punish trade with the enemy, and for other purposes, approved October 6, 1917.'" Those words were added by the President to my draft.

Q. 94. You spoke of the insertion of the name of someone. The insertion is the name of Frank L. Polk?

A. Yes.

MR. KRESEL: In order that your Honor might understand, this is the same order that appointed Mr. Polk.

THE COURT: I understand that. Order of December 3, 1918.

MR. KRESEL: Yes, your Honor.

Q. 95. Did you get a letter from President Wilson dated November 27, 1918?

MR. KRESEL: I have a copy here. Will you produce the original?

(Original letter produced by counsel for defendant, and handed to witness by Mr. Kresel.)

A. Yes, sir.

Q. 96. I notice in that letter there is this sentence.

MR. KRESEL: I will offer the whole letter, Colonel, to make it intelligible.

MR. ANDERSON: May I look it over?

MR. KRESEL: Look at the copy (handing paper).

Q. 96. (Continued). I read this sentence: "Dear Palmer: I dare say you are right and I was wrong about the method of completing the sales you have already undertaken, and I will sign the proclamation I

returned to you the other day if you will return it to me. Your plan of the disposition of enemy property in the United States meets with my approval in principle, and I dare say will meet with it in detail when I have a chance to compare it with the proposals that will be made on the other side. I am going to take the document over with me as a basis for discussion." Now, with that letter before you I would like you to state what you said to the President at the conference that he refers to in this letter, and what was the plan for the disposition of enemy property that he says met with his approval in principle and would probably meet with his approval in detail.

MR. ANDERSON: May I ask if the plan was ever submitted in writing?

MR. KRESEL: We have no copy.

THE WITNESS: I think it was with the letter.

MR. KRESEL: We have no copy. We have been unable to obtain a copy. Of course, we have not access to these papers.

THE COURT: Have you given the Government notice to produce?

MR. KRESEL: We have not been giving each other notice to produce, your Honor.

MR. ANDERSON: I never heard of this particular correspondence.

MR. KRESEL: We undertook to agree in advance that we might submit copies, and so on. We have obviated all that. But I am going to inquire whether that was one of the documents that we asked for and that was stipulated by the Government. No, Mr. Boggs says that it was not. We have no copy, your Honor; it it not available to us. If counsel desires that I withhold further questioning on this point until he can produce the only copy that is available, which is in their possession, why, I am perfectly willing to do that.

You can get it from the files of the White House or the files of the Alien Property Custodian. We can not.

MR. ANDERSON: I will state, if your Honor please, that we do not know whether we can get it or not. This letter is an official letter, and we have never seen or heard of it.

THE COURT: You are the Government of the United States.

MR. ANDERSON: I know; but if your Honor please, we did not have charge of these files and we find lots of papers coming in here that we have never heard of before. This paper was never produced by us. We do not know anything about it. We will undertake to produce it if it is in the records of the United States; but I cannot say that it is in the records of the United States, the files of the Alien Property Custodian. We have searched them and we have no record of any such paper and never heard of any such paper.

MR. KRESEL: You do not know what the paper was. You can not tell.

MR. ANDERSON: We made a search of the files to find out if there was such a paper.

THE COURT: If there is objection, the objection is sustained.

MR. ANDERSON: We will make a further effort.

THE COURT: Until you have an opportunity to say whether you can furnish the paper.

Q. 97. Without, then, Mr. Palmer, discussing the contents of the plan that you submitted to the President, I would like you to state if you will in the conversation that you had with the President which gave rise to the writing of this letter, and particularly I would like you to state what it is that the President is referring to in the first sentence wherein he says, "I dare say you are right and I was wrong about the

method of completing the sales," and that he would sign a proclamation. Will you please just address yourself to that?

A. I sent to the President a draft of the proclamation which I wanted him to issue, declaring a large number of persons there named to be enemy persons.

Q. 98. Will you stop there a minute, please?

A. Certainly.

MR. KRESEL: If your Honor please, your Honor will recall that under the Trading with the Enemy Act, an enemy was defined in certain ways, and in addition thereto the President by proclamation could designate even a German resident here as an enemy. I simply wanted to call your Honor's attention to that because that is what Mr. Palmer is now referring to. Your Honor will find it in Section 2, I think, of the Act.

Q. 99. Will you go on, Mr. Palmer.

A. Such other persons or classes of persons as the President might by proclamation declare to be enemies. We were in the habit before we sold one of these enemy properties, to make assurance doubly sure, that the stocks which we were selling belonged to enemy persons, to have the President proclaim that those particular persons were of the enemy class. So that in addition to the original determination of their enemy character we had this proclamation. I sent to the President a proclamation covering some three hundred enemy persons, and he replied to me returning the proclamation, showing that he questioned whether we should proceed with the sales program——

MR. ANDERSON: Pardon me, Mr. Palmer. Have you got that letter, Mr. Kresel?

Q. 100. Was that in the form of a letter?

A. That was in the form of a letter.

Q. 101. Have you the letter?

A. I have the letter.

Q. 102. Will you find the letter here, please, November 29, 1918, is the date of the proclamation.

A. I would like to say a word, if I might be permitted, to you, in answer to the intimation that these official letters of the President of the United States were taken from the record.

MR. ANDERSON: I did not mean to make any unpleasant intimation.

MR. KRESEL: The intimation has been made.

MR. ANDERSON: I am entirely agreeable that Mr. Palmer make any statement on the subject that he wishes.

A. (Continuing.) The letter is in my possession. It is a very common practice in the departments at Washington to put letters from the President in a separate file and to put either photostatic copies or actual copies in the regular file. These letters appear in this file on that account. They are all letters from the President of the United States. Photostatic or other copies of every letter are in the official files at Washington. This is the letter.

MR. KRESEL: I offer in evidence the letter which Mr. Palmer has produced, from the President to Mr. Palmer, dated November 22, 1918. I ask your Honor to permit us to substitute copies of these letters so that the originals may be retained by Mr. Palmer.

Considered marked "Defendant's Exhibit No. 41," copy to be produced later. *(See Exhibits, Vol. IV, page 2310.)*

MR. KRESEL: I now read the letter. (Reading).

Q. 103. After you had received this letter, you received the letter from the President of November 27, 1918; is that right?

A. Yes, sir.

MR. KRESEL: I now offer in evidence that letter and I have a copy thereof which I ask be marked instead of the original.

THE COURT: Is it satisfactory that the copy should go in instead?

MR. ANDERSON: Entirely so.

Received in evidence and marked "Defendant's Exhibit No. 42." *(See Exhibits, Vol. IV, page 2311.)*

Q. 104. In this letter of November 27, 1918, the President says to you: "I dare say you are right and I was wrong about the method of completing the sales you have already undertaken and I will sign the proclamation I returned to you."

Did you then send back to the President the proposed proclamation?

A. I did.

Q. 105. And did he sign it?

A. He did.

Q. 106. I now show you a proclamation printed in this Trading with the Enemy booklet, beginning at page 121, and asking you to state whether that is the proclamation at the bottom of the page?

A. That is the proclamation.

MR. KRESEL: I offer in evidence the proclamation which commences at page 121 of this book. It is dated November 29, 1918.

Received in evidence and marked "Defendant's Exhibit No. 43." (Same as Plaintiff's Exhibit No. 729-F. *(See Exhibits, Vol. III, page 1940.)*

THE COURT: Is that the proclamation or draft of the proclamation which you were inquiring about a moment ago, Colonel Anderson?

MR. KRESEL: No, your Honor; it is not. The other was a different document which the Government is going to try to get for us.

Q. 107. Mr. Palmer, you know Mr. Joseph H. Choate, Jr.?

A. Yes, sir.

Q. 108. Was he in your office when you were Alien Property Custodian?

A. Yes, sir.

Q. 109. What did he have particular charge of?

A. He was in the Bureau of Investigation, in particular charge of the investigation into the chemical industry and the German chemical interests in the United States.

Q. 110. Did he perform his duties under your direction or under the immediate direction of some one else?

A. I would say under the immediate direction of Mr. Francis P. Garvan, the head of the Bureau of Investigation.

Q. 111. And were you kept informed of what he was doing?

A. I was.

MR. ANDERSON: If your Honor please, that is a clear conclusion. It might cover the entire situation of reports here. If counsel wants to know what was reported, and how, and the facts about it, all right. If a man is kept informed of what Mr. Choate is doing, he only knows from information he receives. That question would cover every possible thing that Mr. Choate did while he was connected with the office. I think that is too general.

THE COURT: Do you press the question, Mr. Kresel?

MR. KRESEL: No, your Honor. Strike it out.

Q. 112. Are you familiar with the report made by you to the President in the month of February, 1919?

A. I am.

Q. 113. Do you know whether Mr. Choate co-operated in framing any part of that report?

A. Mr. Choate prepared the draft of the chapter on chemistry for inclusion in the report, at my request, and submitted it to me.

Q. 114. Can you state how long, before the report was actually sent by you to the President, you had before you Mr. Choate's report on the chemical situation either in its final form or in draft form?

A. You mean by his report the draft of the chapter on chemistry or chemicals?

Q. 115. Yes.

A. My recollection is that it was in my hands for a couple of weeks at least before it was transmitted to the White House.

Q. 116. Do you remember when you sent the report to the President?

A. On the 27th of February, 1919.

THE COURT: This has reference to your Exhibit 30?

MR. KRESEL: That refers to Defendant's Exhibit 30.

Q. 117. Before this report Defendant's Exhibit No. 30 was sent to the President, did you formulate any general policy in your office with regard to patents?

A. I did.

Q. 118. I show you this memorandum dated January 13, 1919. Does that embody the policy with reference to patents, that was to be pursued by your office? (Handing witness paper).

A. With a slight modification that was made when my attention was called by Mr. Hoguet to another part of my arrangement with the Federal Trade Commission, this is the policy that was then publicly announced.

Q. 119. Will you state what the additional matter was?

A. That it would be the policy of the office to demand and take over enemy-owned patents which the Government might require for its own use.

Q. 120. That was additional to the policy outlined in that memorandum that I showed you?

A. Yes, sir. In this statement I divided the patents into three classes. There really should have been four, and there were. It was modified in writing I think.

MR. ANDERSON: It was modified in writing?

THE WITNESS: Mr. Kresel has it.

MR. KRESEL: Yes, I will produce the writing. My recollection, gentlemen, is that this was put in by you. Am I wrong about that?

MR. ANDERSON: I think it is very probable.

MR. KRESEL: I find that it was not, so I will now offer this in evidence.

Received in evidence and marked "Defendant's Exhibit No. 44." *(See Exhibits, Vol. IV, page 2312.)*

MR. KRESEL: It is dated January 13, 1919, "Memorandum of conference in regard to patent situation. Present: Mr. A. M. Palmer, Mr. Caton, Mr. Horne, Mr. Whitaker, Mr. Keohan, Mr. Whitmore, Mr. Gordon, Mr. Ferry."

Q. 121. Were all those gentlemen whose names I have called officials in your office?

A. I do not place Mr. Whitmore. I remember all the others as officials in the office.

(Mr. Kresel then read further from Defendant's Exhibit No. 44.)

MR. KRESEL: I have not read all of it, but I have read all that I care to.

Q. 122. I notice that Mr. Hoguet was not present

at that conference. Did you direct that a copy of that memorandum be sent to Mr. Hoguet?

A. I did.

Q. 123. And was it sent to him?

A. It was.

Q. 124. Then did Mr. Hoguet call your attention to this omission that you speak of?

A. Yes.

Q. 125. Is this a copy of the letter that you received from Mr. Hoguet upon the subject, the letter being dated January 16, 1919? (Handing witness).

A. Yes, sir.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: It is so long that I will not try to read it. I will just let it go in without reading it.

THE COURT: It is admitted.

MR. KRESEL: Is there any objection to it?

MR. ANDERSON: No, except the general objection. I won't offer any objection. It is a photostat copy?

MR. KRESEL: Yes. Perhaps you will withdraw all objection because my attention is called to the fact that that is already in as Plaintiff's Exhibit No. 49.

MR. ANDERSON: If that is the case, then I will withdraw the objection.

THE COURT: The exhibit is withdrawn?

MR. KRESEL: Yes, sir. I now read from Plaintiff's Exhibit No. 49 just one paragraph.

THE COURT: I think it should be made clearly to appear that Colonel Anderson had not fully examined the exhibit at the time that he made his objection.

MR. KRESEL: Yes, certainly.

THE COURT: And that he was just making the

general objection so as to cover all contingencies. That I think should be of record.

MR. ANDERSON: I thank your Honor.

MR. KRESEL: I am reading the second paragraph. (Reads from Plaintiff's Exhibit No. 49).

Q. 126. You spoke this morning of discussing with President Wilson in your conferences preceding the March, 1918, amendment the subject of another amendment then pending before Congress, bearing upon the acquisition by the Government of the German steamship docks. I think you spoke of the Hamburg-American line docks and the North German Lloyd docks?

A. Yes, sir.

Q. 127. Did you have any further conversation with the President upon the subject of those docks; and if so will you state the time and what the conference was?

A. I had such a conference a few days before the President left for Paris, the first time, he came to my office, the office of the Alien Property Custodian and asked me——

Q. 128. I want to fix the date. He left in December, 1918, I think.

A. My recollection is he left on December 4th.

MR. ANDERSON: That is right, sir.

Q. 129. December 4, 1918?

A. Yes, sir. It was a few days, not more than a week before that. He said that he wanted me to hurry up the business of making a final transfer of the title of the Hamburg-American line and North German Lloyd line terminals at New York, in order that he might pay over the money to me for those properties, and have it an absolutely closed incident before he arrived at the Peace Conference, and he stated the reasons which led him to that desire.

Q. 130. And what were those?

A. They were that he desired to be in a position at the Peace Conference to refuse to enter into any negotiations whatever for the return of the terminals but to say that that matter was closed, that the character of the enemy interests had been changed from terminals into cash in the Treasury of the United States.

THE COURT: May I stop you there for a moment, Mr. Palmer?

THE WITNESS: Certainly.

THE COURT: I am wondering, Mr. Kresel—I realize the position in which you are placed by the allegations of this bill—but I am wondering now whether your inquiry does not go into such relations and such disclosures by the President to an official in the Executive Department that should not be inquired of unless absolutely necessary for your protection.

Mr. Palmer is answering your question, as is proper, but it seems to me the duty falls upon me, under the peculiar character of this case, to make this inquiry at this time; because, surely, the evidence now called for by you, and the reasons of the President of the United States for his action in international relations, seem to me a matter that a court should not require to be disclosed, and if disclosed, the Court is without power to review. Consequently I make this inquiry at this time.

MR. KRESEL: Upon your Honor's slightest intimation, I shall desist from further inquiry into the subject. May I say, however, that not only is this matter relevant with reference to the allegations in the bill, but particularly upon the proposition that the transaction that the witness is now describing was put through pursuant to an amendment to the Trading with the Enemy Act passed at the same time and by the same Congress

as this amendment of March, 1918, that we are dealing with. In other words, I present, or I was going to present—because as I say to your Honor, I shall immediately desist——

THE COURT: I am making an inquiry and not a ruling so far, Mr. Kresel.

MR. KRESEL: In other words, the President proposed an amendment covering these docks. Mr. Palmer, as Alien Property Custodian, with the consent of the President, proposed the other amendment with reference to generally selling enemy property. Both amendments were before Congress at the same time and were passed at the same time and were amendments of the same Section, of the same Act at the same time.

What I was going to show was the transaction that the President had with the Alien Property Custodian with reference to those docks under that amendment in order to show what interpretation should be placed not only upon the amendment that they were acting under with reference to the docks, but the concurrent amendment under which the properties here involved were sold.

But as I said to your Honor when I started, I shall ask no further questions about it.

THE COURT: Do not misunderstand me. I am making so far merely an inquiry. I should be glad to hear Colonel Anderson.

MR. ANDERSON: If your Honor please, I did not object to the evidence, because I am trying not to object; but I think that the evidence is objectionable from two standpoints, since your Honor has asked me. First, the standpoint which your Honor has suggested, which seems to me to have very strong weight; and the further standpoint

that upon the statement of counsel this is clearly foreign and irrelevant matter.

THE COURT: Just at the moment I will ask you to confine yourself to the other ground.

MR. ANDERSON: I was going to say, when your Honor asked the question, as to the first ground, I recognize the difficulty that confronts the Court and counsel in drawing the line of discrimination in this matter, and I have no desire in the world to undertake to limit the evidence, if it can be avoided; but I do not think that questions of international relationships should be brought into this case.

I think, representing the Government, in the humble way that I do here, it is probably my duty to object to that, and even the President's desire to hasten the transaction involved in these properties is a matter that might (I do not know) be a subject of some international embarrassment; and certainly his reasons for doing so (I do not know what they were) might be also a very serious difficulty. Now, if it is appropriate on direct examination, it must be equally appropriate for full searching on cross examination, and therefore it would place the Government in a rather embarrassing position, and one which I say in advance I would resolve against the cross-examination.

THE COURT: Now then, my difficulty is increased by this fact, namely, that this is a suit instituted by the Government of the United States, and by the further fact that owing to the characteristics of this suit and the incidents connected with it, we have adopted a broad rule allowing all oral and documentary evidence which in the opinion of counsel upon either side is pertinent or relevant to be admitted and placed of record in the case.

Now, if the Government of the United States institutes a suit which is of such a nature that the defendant, in order to protect itself is required to go into those matters, the question in my mind is ultimately presented whether or not the plaintiff, namely, the Government of the United States, has not by bringing the suit waived all rights that it might have to object with respect thereto, and while as a matter of public policy such testimony would ordinarily be excluded, is not the rule that the Government of the United States, when it institutes a suit, is estopped from asserting it if such evidence should be pertinent to the defense?

MR. ANDERSON: Your Honor, that is a very delicate question. Will your Honor permit me to answer, because it places the Government in such a position that it must respond.

THE COURT: Yes.

MR. ANDERSON: The Government in this case has raised no question as to international rights of any kind. The question is purely between the Government and its officers and citizens. Therefore, as to the policy of selling the property here in question, the wisdom of making a sale of the property, assuming that the proper methods and statutory proceedings were carried out, the Government has raised no question, so far as I recall, in this bill. In fact, I think I have stated with the greatest clearness that I can express that as to the political wisdom of doing a thing of this kind, I would be one of the first to challenge the right of any court to inquire into—the political wisdom; and the sole position of the Government on that question is, first, a challenge of the power to do this thing in its various phases, which I need not go into, but your Honor understands from the argument; and second, a question which is a nice

one, I concede, but on our view of the authorities is perfectly reviewable, whether the person exercising the discretion, assuming the power to have existed to exercise discretion, acted upon such a mistake of fact or want of knowledge of the fact as to make the exercise of discretion a guess. To use an analogous instance, suppose a court were to pass on a case, and the Judge was taken ill, and another Judge came in and never read the record at all, passed on the case without reading the record, in that event it would be really a guess on the results; it would not be a judicial determination at all.

Now, assuming the facts here involved, our view is that this peculiar statute, an amendment added by Congress, required to an unusual degree an ascertainments of those facts. Whether that is true as a matter of law, or whether the facts were sufficiently ascertained, and what were the facts presented are matters of record. What the President said, what he did, in my humble judgment is not called into question in this case.

The sole question is whether somebody so advised him. I hope I have made myself clear on that, and that merely goes to the fact of whether he exercised a discretion founded upon fact or not, and that has related chiefly to the order of Mr. Polk.

In the second place, if by any intendment this bill can be construed to involve any question of international policy or relationship, I do not recall it, and therefore I have not inquired into that question.

Your Honor will recall that in the evidence given by Mr. Polk my direct examination was limited to a very narrow scope, and the cross-examination broadened out a great deal, and on my

re-direct I only asked him as to specific data that was presented to him. I did not ask him as to his reasons for doing anything, even though I took the position that he was acting as an individual and not as an officer.

If I have made myself clear, I hope I have answered your Honor's question, that I think that the case does not call into question here any matter of political wisdom or policy, either domestic or international; and my view of the right of the Court to inquire into presidential discretion, I wish to state again, is limited to the question of an inquiry into the power to do the act, in the first place; second, into whether the method of performing the act conformed to the requirements of the act under which the Executive officer was acting, whether the President or anyone else; and third, where he is required to act upon a state of facts, whether those facts were available or before him to an extent that presented a question of discretion.

I think it has been reviewed a great many times and I do not want to go into the authorities. The Courts have drawn that nice distinction, with due reference to the Executive Department and I think very clearly. I hope I have stated it accurately. I am trying to state what I understand to be the decisions of the Supreme Court of the United States and I do not wish this case to be in any wise enlarged beyond the construction of those decisions, as I recognize the extreme delicacy of this matter. The other objection I will not discuss.

THE COURT: I wanted this argument on the assumption that it is pertinent. The other question is an independent one which we have not given much attention to.

MR. ANDERSON: I hope I have made myself clear, your Honor.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: I think, your Honor, that the situation that has arisen is but another proof in support of your Honor's statement as I recall it, during Mr. Polk's examination, of the wisdom of the rule laid down by the Courts, that the Courts will not inquire into the reasons actuating the exercise of a discretionary act by the Executive, where such discretion was committed to him by Congress.

I shall prosecute this inquiry no further. I shall immediately go to another subject.

MR. ANDERSON: Of course, I understand that the answer, so far as it went, is taken subject to the objections which I have indicated.

THE COURT: I assume that all testimony taken upon the part of the plaintiff was subject to any objection that the defendant might at any time raise thereto and that all testimony taken on behalf of the defendant is subject to such objections as may be taken at any time before final decree with respect thereto.

Q. 131. Mr. Palmer, among the properties in your charge as Alien Property Custodian, did you have any property of the Bayer Company?

A. We had the capital stock of the Bayer Company owned by enemy persons transferred to the Alien Property Custodian, and as stockholder operated the Bayer Company.

Q. 132. What was the business of that company?

A. They were distributors, possibly makers, of some pharmaceuticals, particularly the medicinal preparation called aspirin.

Q. 133. Was the corporation operating under patents?

A. Yes.

Q. 134. Did you have those patents? I mean had you seized those patents?

A. We took those patents.

Q. 135. As German property?

A. As enemy property.

Q. 136. And do you recall in whose names those patents were or some of them?

A. My recollection is they were in the name of the German owners of the stock of the Bayer Company.

Q. 137. But they were not in the name of the Bayer Company here whose stock you seized?

A. No.

Q. 138. Did you sell the Bayer Company?

A. I sold the Bayer Company.

Q. 139. Do you remember what month it was, and what year?

A. I think in December, 1918.

Q. 140. Did you sell the stock that you had seized?

A. I did.

Q. 141. Did you sell at the same time the patents that you had seized?

A. Yes.

Q. 142. That is, the patents that were being used in the Bayer Company's business?

A. That is right.

Q. 143. Up to that time, that is up to the time of the sale of the Bayer Company, had you seized any patents that were not attached, so to speak, to a going business which you had or in which you had stock?

A. No, I think not.

Q. 144. Do you recall to whom the Bayer Company and the patents were sold?

A. The Sterling Products Company of West Virginia, was the purchaser as I recall it.

Q. 145. And it brought a considerable sum of money?

A. Considerable.

Q. 146. Can you tell us about how much?

A. Something more than five million dollars.

Q. 147. At that time did you know that there were other German patents here in the United States?

A. Yes, we knew that.

Q. 148. Had you caused an investigation to be made by Mr. Choate with reference to such German patents?

A. Mr. Choate had been making at my request an investigation into the entire chemical situation as affected by the German ownership of patents, American patents or otherwise, in this country.

Q. 149. The sale of the Bayer plant to the Sterling Products Company carried with it not only the stock of the Bayer Company but also the patents?

A. There were sold at the same time something like 1200 patents.

THE COURT: Do you mean the capital stock or the tangible assets?

MR. KRESEL: No, the capital stock of the corporation.

THE WITNESS: Yes, that is what we sold.

Q. 150. And 1200 patents, as I understand, you had seized as the property of some Germans?

A. In the management and operation of the Bayer Company's business, through a Board of Directors appointed by me representing the enemy-owned stock which had been assigned to me, as Alien Property Custodian, we discovered that they were using patents the title to which was in enemy persons and not in the Bayer Company. When we got that property ready for sale or approached the time that we desired to sell it, in order that all assets might go to the purchaser, we demanded and took over all those patents and sold

them along with the stock of the company at public sale to the highest bidder.

Q. 151. Was there a subsidiary of the Bayer Company?

A. Yes.

Q. 152. Do you recall the name of that?

A. There was a company which we treated as in the Bayer nest called the Synthetic Patents Company, which owned some patents.

Q. 153. Some of those 1200 patents?

A. That is my recollection.

Q. 154. And who owned the stock of the Synthetic Patents Company?

A. The Bayer Company.

Q. 155. Then is it a fact that when you sold the stock of the Bayer Company, that carried with it the stock that you owned of the Synthetic Patents Company?

MR. ANDERSON: I think that is a question of law. He has stated the relationship, and I have not called for the evidence of it that is usually required. I think it is a question of law what the sale carried with it. Whether the stock was owned by the corporation and what would be the effect of the sale is purely outside the scope of an examination of the witness here.

THE COURT: Can there be any doubt it is a legal conclusion if the witness disclosed that the stock of this subsidiary company was in fact all owned by the Bayer Company?

MR. KRESEL: There is no doubt that it is a legal conclusion, but I was not aware that there could be any doubt as to what the conclusion is.

MR. ANDERSON: Then why ask the question?

THE COURT: I think the objection is well taken.

Q. 156. Subsequent to the sale of the Bayer

Company did you in any way change the policy that you had outlined with respect to the seizure of the patents?

A. Well, the Bayer Company sale opened my eyes to one phase of the situation that I had not before fully realized.

MR. ANDERSON: I think I would like to ask for a direct answer to that question.

THE WITNESS: Of course, I am trying to.

MR. ANDERSON: You are leading up to it, but just for legal reasons.

THE COURT: Will you have a yes or no answer to that, Mr. Kresel?

Q. 157. Will you answer that yes or no, please.

A. Yes.

Q. 158. Will you state just what change you made and what led to the change?

MR. ANDERSON: And what time, please.

MR. KRESEL: Yes, please state the time.

A. Well, immediately after the Bayer sale I realized in the first place that it was a very dangerous thing to sell a large batch of patents——

MR. ANDERSON: If your Honor please, may I interrupt one minute. I have no objection except the general objections which I have stated, to the witness's stating whether there was a change of policy and when that change took place, but if there is any written evidence of it I ask that they produce the evidence. I do not think the reasons underlying it are evidence now. If I examine him on cross-examination I might test his reason, but I do not think that counsel could follow the reasons which may have actuated this witness to change a policy. The essential fact is whether he changed it or not, and that is all to be said about it

MR. KRESEL: I want to be heard on that, your

Honor. The charges made here are that the change of policy was brought about by conspiracy. Your Honor will recall the charge in the bill that, whereas Mr. Bradley appearing before the Congressional Committee urging the adoption of this 4th of November amendment, is alleged to have stated that the only purpose was in order to enable the Custodian to sell patents which went with a going business, that then they draw the conclusion that that was the sole reason why Congress passed the legislation and they then go on and say that the conspirators got together and got the Custodian to practically misuse the November 4, 1918 amendment in order to enable the conspirators to carry out their conspiracy. I have a right to show by this witness what in fact it was that changed his policy, and I do not have to wait upon the chance that counsel on the other side will bring it out by cross-examination.

THE COURT: I think for the reasons stated by you, Mr. Kresel, and also for other reasons, this testimony is admissible. You may take the answer.

MR. ANDERSON: Exception.

THE WITNESS: What is the question?

(The question was repeated as follows.)

Q. 159. Will you state just what change you made and what led to the change, and please state the time?

A. Immediately after the Bayer sale, when I realized that a large number of chemical patents had gone in one sale to a single purchaser, with all that all might imply by way of monopoly of the product, etc., and that the Bayer Company was practically the only one of these German chemical companies which had a going business in this country, where we could have an actual sale either of the stock or of its assets and

place them in American hands, I saw that if I adhered to the policy of only taking over and selling such patents as were directly affiliated with or connected with some going concerns which I was proposing to sell I would miss the accomplishment of the purpose we had in mind of Americanizing the industry. Therefore. I would have to do just what I announced on January 13th as my policy, that we would seize or take over and sell enemy-owned patents where they were important to an industry in America in which the Alien Property Custodian had any concern or interest, and from that time on our policy was of that sort.

Q. 160. When you came to the conclusion of the policy that you have outlined what steps did you take, what instructions did you give, to carry out that policy?

A. The first consideration of it was in a conference immediately after the Bayer sale, with Mr. Garvan, chief of the Bureau of Investigation, who felt as I did on the subject. We were agreed that some course, neither of us then knew what, had to be pursued which would result in taking these other patents not associated with any going business, in the dye and chemical line, from the German owners and Americanizing them.

MR. ANDERSON: Could you state the time and place of that?

MR. KRESEL: I am coming to that.

A. (Continued.) Immediately after the Bayer sale in my office in Washington, when Mr. Garvan came down from New York, where his offices were, we had the first conference on the subject.

We were both impressed by the fact that the Bayer sale demonstrated that if that policy was going to be continued, we were at the end of our rope as far as making an American industry out of the chemical industry was concerned and I asked Mr. Garvan to

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give consideration to the matter, to have Mr. Choate and Mr. Hoguet work upon it, and to bring back to me, when they were ready, some feasible plan by which we could accomplish the purpose that we had in mind, of putting these patents in a way where they might be used for the general public benefit in the building up of a competitive chemical industry in this country, to the end that the Government might be protected and safeguarded in the future, in peace and in war, by a great chemical industry, with all the possibilities of weapons of defense coming out of it as by-products and all that. That, Mr. Garvan went to work at.

Q. 161. May I stop you there. I wonder if you would enlarge somewhat or be a little more specific as to your meaning of the statement that if you pursued the policy that was pursued in the Bayer sale, you would be at the end of your rope. I do not quite get the meaning of that?

A. Well, my information was that practically speaking—I may not be absolutely accurate about it—but practically speaking the Bayer Company was the only chemical property that we would be likely to have for sale, the only one where there was a going business in this country. The other German chemical companies had agencies over here, but they were mere selling agencies as a rule. There was not anything for us to take and seize and sell to the public at public sale.

Therefore, if we did not take the patents which these other concerns in Germany owned, we would not have any means of putting into American hands the control of the chemical industry, outside of that, which the Bayer had, which at that time was in German hands.

Of course, by that time I knew what Mr. Choate had found out, not only from himself, but also from Mr. Garvan himself. Choate and I saw each other frequently and he told me what he was learning. Gar-

van made it a practice to come to Washington every week and spend a day, and frequently a large part of the night, telling me what had been accomplished in the investigation of enemy ownership in various properties and particularly, this difficult and interesting and important problem of the chemical patents. So that by the time the Bayer Company came around to be sold and was sold, I knew, as Mr. Garvan knew, what the situation was.

Q. 162. How long had Mr. Choate been working on this investigation?

A. Nearly a year at that time, since February 1st.

Q. 163. 1918?

A. Since February 1, 1918.

Q. 164. Now then, in your conferences with Mr. Garvan, Mr. Choate and Mr. Hoguet, as to working out some plan of accomplishing the purpose that you had in mind as to the disposition of these German patents, did you take into consideration the advisability of learning what the chemical industry in the United States, such as it was, desired in the matter?

A. Yes.

MR. ANDERSON: I just want to note an objection, if your Honor please, to this examination, as being very leading. I think it would very much relieve the necessity for my objection if counsel would ask this gentleman, whose knowledge and ability is beyond question, to say what he did do rather than to state what he did and ask him to say yes or no.

MR. KRESEL: I have to lead up to it.

THE COURT: I think the leading questions are not detrimental. They save time. But I am going to sustain the objection and ask Mr. Kresel to sacrifice the time and present this testimony in a non-leading form.

Q. 165. Mr. Palmer, you are familiar with the charges in this bill of complaint? You have read it?

A. I have read it.

Q. 166. Substantially, the allegations in the bill are that beginning about June, 1918, certain named corporations and individuals, trade associations and others not named, entered into conspiracy to induce you as Alien Property Custodian to seize those German patents; and further, the conspiracy was to organize a corporation and to induce you as Alien Property Custodian to sell these patents to that corporation, which it is alleged the conspirators were to control, and thereby the conspirators were to perpetuate a monopoly of the chemical industry which it is alleged they had already obtained. I am going to ask you whether, prior to the organization of The Chemical Foundation, which it is in evidence was incorporated on the nineteenth day of February, 1919, you ever met any of the representatives of the American Dyes Institute, the Textile Alliance——

MR. ANDERSON: Mr. Kresel, the name of the Textile Alliance has been stricken out of the bill.

Q. 166. (Continuing.) Or the Manufacturing Chemists' Association, and whether any of them or any of their representatives spoke to you or made any representations to you with reference to these German patents?

A. I never met any of the gentlemen connected with those institutions so far as I know; and none of them ever said a word to me about these German chemical patents or any other patents.

Q. 167. Some of the other corporations that are mentioned are the National Aniline & Chemical Company, the General Chemical Company, the Solvay Process Company, the Semet-Solvay Company, the Barrett Company, E. I. duPont de Nemours & Company. As far as you know, did any representatives of

any of these companies approach you or make any representations to you with reference to these German patents?

A. None whatever.

Q. 168. Mr. Morris R. Poucher is particularly named in the bill of complaint as the representative of these interests and it is alleged in the twenty-third paragraph of the complaint "that these firms, corporations and associations, through their representatives aforesaid, and especially through said Morris R. Poucher, urged upon said Alien Property Custodian and his assistants" and so on, "the pretended necessity for the protection of American industry of securing control or ownership of said enemy-owned patents, and urged upon them their pretended duty in the public interest to seize, sell, or dispose of the same." Up to the time of the organization of The Chemical Foundation, had you ever met Mr. Poucher?

A. I never had met Mr. Poucher.

Q. 169. Have you met him since?

A. I have met him since.

Q. 170. When was the first time you ever met him?

A. Oh, long after I ceased to be Alien Property Custodian I met him for the first time.

Q. 171. But were you aware, as Alien Property Custodian, that your associates, Mr. Garvan, Mr. Choate, and Mr. Hoguet, were in touch with representatives of the chemical industry and discussing with them this question of the disposition of these German patents?

A. I was aware of it.

Q. 172. Did you instruct them to do that?

THE COURT: Colonel Anderson has intimated that he has an objection to your leading questions. This one is leading.

MR. KRESEL: I shall not argue about that. I do not think it is leading.

THE COURT: Maybe I am wrong. Colonel Anderson, do you object?

MR. ANDERSON: I think so, sir. I hope the Court will understand——

THE COURT: We will not discuss it. We will assume that it is leading.

Q. 173. Had you any talk with Mr. Garvan, Mr. Choate and Mr. Hoguet, or any of them, about the chemical industry in relation to these patents?

A. I had had talks with all of them, had told them what my purpose was in a very broad and general way, and left to them the working out of the details of a plan by which that broad purpose could be carried out. They were perfectly familiar with my plan, and they kept me familiar with their working out of the details.

Q. 174. Please state when it was that Mr. Garvan, Mr. Choate and Mr. Hoguet reported to you what progress they were making in this matter. I mean the first time that anything definite was reported to you?

A. I would say that their report to me of their plans taking some definite shape began to come late in January.

Q. 175. Of what year?

A. Of 1919, or some time in January of 1919.

Q. 176. Do you remember anything about a meeting held in your Washington office at which representatives of the chemical industry were present?

A. I remember about the meeting being held.

Q. 177. Do you know how that meeting came to be held?

A. Yes, I do.

Q. 178. Will you state how the meeting came to be held?

A. By that time, Mr. Garvan and Mr. Hoguet and

Mr. Choate, either one or all of them, had advised me that they had been in touch with representatives of the chemical industry, and that together they had discussed this problem from the viewpoint of my plan that I had announced to them.

Q. 179. May I interrupt you there. Did they say to you whether they had approached the industry or whether representatives of the industry had approached Mr. Choate, Mr. Garvan and Mr. Hoguet?

Mr. Anderson: If the Court please, I am constrained to object to that question. Mr. Garvan, Mr. Hoguet and Mr. Choate are available to testify in this case, and I do not think that the information and conversations between them about this matter, when they are available, should be given by the distinguished witness now on the stand; but if there are any written reports, I am perfectly willing that those reports should go in, subject to our general objection. But I do not think that these conversations are evidence.

Mr. Kresel: I do not understand the point of view of Colonel Anderson with reference to written documents. I do not understand the sanctity of a written document. A witness may state what was told him, whether subsequently there was a report made of it or no. As to whether conversations are admitted between Mr. Palmer and the other gentlemen, which I think is the real point of the objection, the Government has undertaken to put in here a vast amount of documentary proof of what statements were made by Mr. Hoguet to Mr. Palmer, and what Mr. Choate said to Mr. Hoguet. Why, the records are full of that. It seems to us that we are entitled to show what information Mr. Palmer had from those associated with him, upon which he took the action which I shall show he did take.

THE COURT: It seems to me that the evidence is clearly admissible and that the allegations of the bill charge that a certain Government official (I think it was Mr. Palmer) was deceived. Now, whether he was deceived is a question that makes it necessary to know what representations were made to him by Mr. Choate, Mr. Hoguet and Mr. Garvan. An independent inquiry is, I take it, whether they did or did not approach the representatives of the manufacturers or sales organizations of the dye and chemical industry in this country; but another and a separate and an independent inquiry is as to the representations those persons made to the Alien Property Custodian. I think the objection should be overruled and the answer should be taken.

A. You understand, I laid out a plan in a broad way of what we desired to accomplish, and I sent these gentlemen, who were my representatives, out to work out the details and bring me back a perfected plan for my consideration. I instructed them to do what was necessary to work up that kind of a plan.

When I first learned of the interest of the representatives of the industry in the plan, it was my understanding that that was in response to my instructions to my representatives to consult with the industry and with everybody that might be interested, to aid them in building up such a plan; and they went to the representatives of the industry for the purpose of seeking assistance and ideas and suggestions as to the practical working out of a plan to accomplish the purpose which I had in mind and had announced to them. I think you originally asked me how these gentlemen came to attend the meeting.

Q. 180. Yes, I am coming back to that.

A. All right.

Q. 181. You speak of the general plan that you

had laid out, giving instructions to Mr. Garvan, Mr. Choate and Mr. Hoguet to work it out in detail. I am going to ask you to state what the general plan was that you laid out to them?

MR. ANDERSON: I think I asked if that was not presented in writing, awhile ago, and he testified that that was his policy and plan of the 13th of January, a memorandum.

MR. KRESEL: No, that was not the plan at all.

MR. ANDERSON: Modified by letter from Mr. Hoguet?

MR. KRESEL: No.

Q. 181 (continued). Mr. Palmer, will you answer the question?

A. The information that I had received had impressed me with the importance of several things in relation to this chemical patent business, all of which were factors in the working out of the problem. The tremendous development of the chemical science and industry for war purposes, as the war had demonstrated, made the chief and largest impression upon my mind. The absolute necessity, as demonstrated by Germany, of having a war industry in this country—I mean having a chemical industry in this country, if we were going to be adequately prepared for the kind of wars the last war showed the next war to be, led me to declare that we must work out some plan by which this German grip upon the chemical industry, so far as it applied to America, must be transferred to a new American industry under such conditions as would safeguard the Government in the use of every product of the chemical industry which it might require for its own safety and protection in the future; that it ought to be built up and developed in such a way that the Government could constantly have the benefit of it.

That was the one broad phase of the plan that I laid down to these gentlemen. The other was, and it

was not my own entirely, but largely the result of the Federal Trade Commission's views and of what I knew to be the general policy of the administration, that in the building up of that industry a plan had to be worked out by which it should be a competitive industry and no monopoly should result from it.

Now, those were the two big ideas. It was all nebulous in my mind. It was very general and very broad. The purpose was plain. We wanted to build up an American industry in order that the Government and the people should benefit from it. We wanted to do it in a way that would make that absolutely certain forever and in a way that would not result in monopoly. Now, with that broad and general plan these men went out and tried to work out the plan.

Q. 182. I am coming back to that meeting about which I questioned you. I asked you whether you could state how the meeting came to be held. In other words, who called it, if you know?

A. Yes. Well, I asked either Mr. Choate or Mr. Garvan, who told me that these gentlemen had been discussing the matter together and with them and that they had ideas upon the subject which they would like to have me hear and discuss with them.

In response to that statement or report, I asked Mr. Garvan or Mr. Choate, I do not know which, to say that I would be glad to see them, and ask them to come down to Washington in a body so that we could make it as brief as possible, and let them all state their views to me. A day was fixed and they accepted the invitation, a large number of them, several, and came. Unfortunately, when they got there I was ill at home and unable to leave the house; so that I asked a report of everything that was said at the meeting be made and submitted to me, and a stenographic report was made and given to me the next day.

Q. 183. I show you Plaintiff's Exhibit No. 28,

which is a report of this conference. I do not ask you to read it through, but just glance at it and state whether that is what was submitted to you as a report of what took place at this meeting?

A. Yes.

Q. 184. And did you read it?

A. I did.

Q. 185. I notice that according to the minutes of this meeting there were present representing the Alien Property Custodian, besides Mr. Choate and Mr. Hoguet, Mansfield Ferry. What was his position?

A. He was then general counsel for the Alien Property Custodian.

Q. 186. And F. J. Horne; what was his position?

A. He was then director of one of the bureaus.

Q. 187. And Mr. W. T. Gordon?

A. I think Gordon was the chief of the Patent Division. I am not sure. I can't remember what position he held. He was a part of the organization somewhere.

Q. 188. After you read the report of the proceedings of this meeting, did the suggestions made therein meet with your approval?

A. You mean the suggested plan for the formation of a corporation?

Q. 188 (continued). Yes.

A. Yes. I had discussion about it before I announced any approval of it.

Q. 189. With whom?

A. With Mr. Garvan and Mr. Choate.

Q. 190. And then did you give them any further instructions?

A. Yes, I told them to go ahead and work out the plan along that line.

Q. 191. Do you remember receiving this letter from the American Dyes Institute dated February 7, 1919, which is now Plaintiff's Exhibit No. 30?

A. I remember that letter. I have seen it.

Q. 192. Do you remember receiving with that letter a report of the Executive Committee of the American Dyes Institute, which is marked Plaintiff's Exhibit No. 29?

A. Yes, sir.

Q. 193. And subsequently there was a letter written by the American Dyes Institute which substituted another report for this one. Do you recall that?

A. I recall that; but I think from the original letter the wrong report had been sent.

Q. 194. All those communications were brought to your attention, were they?

A. They were.

Q. 195. And you saw from those what the plan was as to the organization of a corporation to take over these patents?

A. Yes, sir.

Q. 196. And did that meet with your approval?

A. It did.

Q. 197. How soon after the enactment of the amendment of November 4, 1918, did you begin to seize German patents; I mean, demand and seize German patents?

A. Immediately.

Q. 198. And when you discussed with Mr. Hoguet and Mr. Choate and Mr. Garvan your plan and instructed them to consider how it could be effected, were you at that time seizing German patents?

A. We had at that time seized a large number.

Q. 199. Colonel Anderson calls my attention to the fact that I am in error in speaking of conferences between yourself, Mr. Choate, Mr. Garvan and Mr. Hoguet. His recollection seems to be that you did not represent Mr. Hoguet in those conferences. Am I wrong about that?

A. Oh, yes, I did. I certainly intended to.

Q. 200. That was my understanding about it?

A. I will not say that the conferences consisted of the four of us.

Q. 201. At all times?

A. At all times. I was in the habit of holding conferences with every one of them. We had them at all hours of the day and at all places. Frequently I would see Mr. Hoguet by himself, frequently Mr. Choate, frequently Mr. Garvan, and sometimes all of them.

Q. 202. Will you state how soon after the sale of the Bayer plant, which as I recollect your testimony, you said occurred in December, 1918, you had the first of these conferences with your associates at which you discussed the necessity of making the disposition that you have outlined and discussed this plan?

A. The very first one was immediately after the sale and was with Mr. Garvan. Whether it was the next day or two days after, I do not remember; but the thing was the freshest thing in our minds at the time.

Q. 203. But the proposition began to be discussed immediately after the Bayer sale?

A. Immediately.

Q. 204. As plans were being perfected for The Chemical Foundation were you kept informed thereof?

MR. ANDERSON: I do not think he can answer that. I think he can say what information was conveyed to him, and when, but how does he know that he was kept informed of all information.

MR. KRESEL: I did not ask him whether he was advised of all the information.

THE COURT: I think the question is objectionable.

MR. KRESEL: I will withdraw it.

Q. 205. Did you have any information submitted to you about the organization of The Chemical Foundation before its incorporation?

A. Yes.

Q. 206. Will you state what information in that respect was submitted to you, by whom and when?

A. Well, Mr. Garvan reporting for the three of them as to what had been done was telling me every time I saw him about what progress had been made in the organization or the proposed organization of the institution which we had planned. He told me when they had settled upon the name and what the name was to be. He told me when they came to a final agreement as to how much the capital stock would be, and these agreements were all tentative, subject to my approval, as he explained to them, and that is the reason he was reporting them to me. He advised me of the plan for the number of directors to be had. He advised me when it was suggested to him that he should be president of the company, saying that he was disinclined to accept it because he was tired of this job and wanted to get out, and I very earnestly and strongly urged him to accept it.

I think it was entirely upon my insistence that he did so. I was advised by them that the preparation of the charter itself was in the hands of Judge Ingraham, who was on our Advisory Sales Committee and had been Judge of the Appellate Division, I think, of the Supreme Court of New York, and of Judge Gray of Delaware, and they submitted to me several drafts, a couple of drafts, I do not know how many, of the proposed charter for my suggestion or criticism, approval or disapproval. I think I may say that I watched every detail with all the care that I could and we realized or thought we realized we were doing a big thing, and we wanted to do it with care and think of everything we possibly could think of to safeguard the interests of the country and make certain the carrying out of our purpose. So we counseled together constantly. I think

these gentlemen told me everything they were doing and we exchanged our minds on the subject.

MR. ANDERSON: I move to strike that out.

THE WITNESS: Well, I know they did.

MR. ANDERSON: He could not know that they told him everything; it is a physical and mental impossibility.

MR. KRESEL: If counsel for the Government desires to have that answer stricken out I will consent to it.

THE COURT: Just what portion?

MR. KRESEL: That portion wherein he said "these gentlemen told me everything."

THE COURT: Yes.

Q. 207. Did you know it was a part of the plan that Mr. Choate should be the general counsel of the new company?

A. I certainly did.

Q. 208. Did you know that it was the plan that Mr. Hoguet was to be the patent counsel of the new company?

A. I did.

Q. 209. Did you know that it was the plan to have a voting trust covering the common stock of the company?

A. I did.

Q. 210. Did you know that it was the plan that the common stock was to be the voting stock of the company?

A. Yes, I knew that.

Q. 211. Did you know that it was the plan to have this voting trust extend—well, I won't lead you. How long to your knowledge was it the plan to have the voting trust extend?

A. Well, our plan was to make it extend long enough to cover the life of the longest lived patent that

we took over and sold to The Chemical Foundation, which was seventeen years.

THE COURT: We have reached a point now where we probably could suspend.

I have to take up some other matters. There is one question I want to ask. I am not suggesting its materiality, and I do not know whether it may be material or not, but it has been referred to several times. That is the importance of the chemical industry in America to a possible further war as essential for the protection of America. I do not want to unnecessarily go through the question whether I may take judicial notice of that at the time I am writing the opinion, and if either side deems it material, I hope they will show the reasons for that, rather than let me spend a half a day or so examining the authorities.

MR. KRESEL: May I state to the Court that it is our purpose to put in proof upon that point.

THE COURT: I do not want to have to be troubled with the question of whether I should take any judicial notice of that, if it becomes material. I do not know whether it is material or not.

MR. KRESEL: One more thing, if your Honor please; I am informed that Defendant's Exhibit 32-D is already in evidence as Plaintiff's Exhibit No. 5. Therefore, I ask leave to withdraw Defendant's Exhibit 32-D.

THE COURT: Let it be withdrawn.

MR. ANDERSON: What is 32-D, may I ask?

MR. KRESEL: It is one of the Executive orders.

(Whereupon, at 3.30 o'clock Standard Time, an adjournment was taken until Friday, June 29, 1923, at 8.30 o'clock a. m., Eastern Standard Time.)

EIGHTEENTH DAY.

Wilmington, Delaware, June 29, 1923, at 8.30 o'clock a. m. Standard Time

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. KRESEL: If your Honor please, the last exhibit that I put in yesterday was Defendant's Exhibit 44. My attention is called to the fact that that document is already in as Plaintiff's Exhibit No. 453. I therefore desire to withdraw Defendant's Exhibit 44.

THE COURT: Let it be withdrawn.

A. MITCHELL PALMER, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. KRESEL:

Q. 212. Mr. Palmer, I asked you yesterday about the relationship between the Synthetic Patents Company and the Bayer Company. Do you remember?

A. Yes.

Q. 213. With reference to the disposition of the Bayer patents you stated, as I recall it, that the Synthetic Patents Company was a subsidiary of the Bayer Company. Do you desire to make any correction in that?

A. I had first stated that the patents were largely owned by the same persons who were the owners of the stock of the Bayer Company, and you then asked me if there was not a subsidiary company, and I said yes. Strictly speaking, the Synthetic Patents Com-

pany was not a subsidiary of the Bayer Company. It was, I might say, an affiliated company. It was a corporation formed for the purpose of holding and exploiting patents and it owned most of the patents which the Bayer Company used. The stock of the Synthetic Patents Company was not owned by the Bayer Company, but by the German interests who owned the patents and the stock of the Bayer Company.

Q. 214. And did you seize the stock of the Synthetic Patents Company?

A. Well, I took it over. In the early days we did not seize. We demanded and received. We got to seizing later on.

Q. 215. And when you made the sale of the Bayer property, did you at the same time and as a part of that transaction sell the stock of the Synthetic Patents Company?

A. Yes, at the same time, in the same sale, to the same purchaser.

Q. 216. I now, Mr. Palmer, desire to question you with reference to the order made by Mr. Polk, dated February 26, 1919, which has already been put in evidence, authorizing the sale of these chemical patents to The Chemical Foundation. I should like you to state what conferences, if any, you had with Mr. Polk, with reference to the making of that order, giving the time, if you will, and who was present?

A. I first went to see Mr. Polk on the morning of February 26th at his office in the State Department and found that he was engaged, I think, at the White House. I waited for him for a time. He did not return and I could not wait any longer; so I went back to my office and wrote him a letter enclosing the Executive order, a draft of the Executive order, and enclosing also part of my report which was then ready for transmittal to the President.

Q. 217. What part was that, may I interrupt you?

A. What is that?

Q. 218. What part was that that you enclosed?

A. That portion of the report which had to do with chemicals, Chapter 2, I think it is, in the report; and I marked with pencil marks on the report the portion that I particularly desired him to read. Later in the day I got in touch with him and saw him and we had a conference at his office in the State Department.

Q. 219. Before you proceed to state the conference, I show you Plaintiff's Exhibit No. 90 and ask you whether that is a copy of the letter you say you wrote to Mr. Polk, with which you say you sent him the proposed Executive order and the portion of your report?

A. It is.

Q. 220. Will you proceed, please?

A. At this conference I repeated to him what I had said in the letter; and in addition to that went very fully into the chemical situation, describing to him at least all the high points in the report which we were making, which showed the facts and the history of the German control of the chemical industry, sketched its importance to the country and to the Government, and outlined to him in detail the plan that I had devised of selling these chemical patents to The Chemical Foundation; describing what The Chemical Foundation was, what our understanding with it was and the cash price which was to be received for the transfer of the patents to the Foundation and the other considerations which had moved me in making the sale.

I remember that our talk was longer than I expected it to be, because to my surprise and satisfaction, Mr. Polk was intensely interested in the thing

and had a great deal of knowledge about it himself which he seemed to have acquired from other sources and we discussed it at length. He signed the order.

Q. 221. In this letter Plaintiff's Exhibit No. 90 I find this concluding paragraph: "I would go to the President about it, but you know the situation at the White House and I see no reason why you should not make the order." Will you state what you were referring to there, as to the situation at the White House?

A. Well, the President had just gotten back to the White House I think the evening before. We all knew he was going to stay only until the 4th of March, and everybody around him was trying to save him as much as possible. He did not have time to do the hundredth part of the things he was being called upon to do and we who were the heads of various departments in the city were all endeavoring to save him everything possible. It was only that which led me to say to Polk, who knew exactly as I did and who was trying to do what I was trying to do, save the President everything possible, that he should sign the order.

Q. 222. Your report to Congress, which is Defendant's Exhibit 30, was made as of the close of business February 15, 1919. Do you recall that?

A. As of.

Q. 223. Yes.

A. Yes, sir; as of the 15th of February.

Q. 224. The letter of transmittal to the President is dated February 22, 1919. You testified yesterday that notwithstanding the date of the letter, the report was not actually sent to the President until the 27th of February, 1919?

A. Yes, sir.

Q. 225. In your report, speaking of the transfer of these patents to The Chemical Foundation, you say: "By Executive order obtained under the provisions of the Act, I have sold to this company for the sum

of $250,000 approximately 4500 patents," etc. You say, "I have sold." At the time when you sent this report to the President, that is on February 27, had the transaction actually been made by you?

A. Yes.

Q. 226. The Executive order had been signed the day before?

A. Signed on the 26th.

MR. ANDERSON: I object, if your Honor please. The only evidence of sale by the Alien Property Custodian must be the written evidence. It is all a matter of writing. And therefore I wish to note, in addition to our general objection, the objection that this matter is a matter of writing, the contract between the parties is in writing, the transaction of sale is in writing, and cannot be varied by parol evidence.

MR. KRESEL: I think, sir, that this is as good a time as any to have an understanding about that. Quite true that the instrument of assignment was dated the tenth day of April, 1919; but it is our contention, and the evidence now is, that the sale, the actual sale, was made and agreed upon before the twenty-seventh day of February, 1919. I do not understand what Colonel Anderson means by his contention that a sale by the Alien Property Custodian must be in writing. An agreement to sell may be oral or may be in writing. The actual instrument whereby the transfer is made was in writing here, but that does not fix the date when the transaction was made. We contend that the transaction was made and completed by the twenty-seventh day of February, 1919, and while Mr. Palmer was still Alien Property Custodian. That is our contention.

MR. ANDERSON: In order to make the record complete, I wish to move to strike out all the

evidence of the witness as to the alleged sale and the date thereof, on the ground that the record in regard to this subject is in writing, whether required to be or not, the instrument of conveyance is in writing, and that speaks for itself and cannot be modified either as to date or otherwise by parol testimony or by the evidence of this witness. I mean, to add to that that the record of the sale is the assignment, and the date of the transaction and consummation thereof is the deed, and stated in the deed.

THE COURT: Is it your contention, Colonel Anderson, that Mr. Kresel cannot show the time when the agreement to make the sale was consummated; that is, as a separate matter or matter separate and apart from the consummation of the sale?

MR. ANDERSON: It is my contention, sir, that this whole matter is a matter of record; so far as of any force at all, binding upon both parties to the transaction; and that that record is conclusive and cannot be varied.

THE COURT: I am afraid I did not make my question clear, because what I had in mind was whether or not it is your contention that the defendant may not show when the agreement to make the sale and the details of the sale to be made were completed.

MR. ANDERSON: That is my contention in the face of this record, substantially. But the defendant has not undertaken to show that. He has just said it was prior to a certain date, and that date is prior to the date stated in the record evidence of the transaction itself; and I submit that that evidence in the first place, is too indefinite to mean anything, and in the second place, that it is wholly incompetent and illegal.

THE COURT: Is not the best evidence, Mr. Kresel, of the actual sale and the consummation of the sale, the assignment, or do you contend that the sale was a matter that consisted of the agreements which were entered into and binding, and that the assignment is the mere execution, or has merely the effect of an execution?

MR. KRESEL: Your Honor has stated my contention exactly. Our contention is that the agreement to sell, and the agreement as to all conditions of the sale were made before February 27, 1919.

THE COURT: Then I understand your contention. But is not Colonel Anderson's objection, even under that contention of yours, valid to the extent that you are asking the witness when the sale was consummated, which probably would be open to different interpretations? That is, if you use the word "sale" and the witness used the word "sale," without making clear as a fact that to which you are both referring by the use of the word "sale," the record is open, it seems to me, to the express objection of Colonel Anderson and also to such further objections as the objection stated may necessarily imply. I do not mean to say that the use of the word "sale" would be prohibited. I do not know that it would, if you have made clear what you mean by the word "sale."

MR. ANDERSON: Let me make myself clear, because this will probably become an issue and we might as well settle it here. What constitutes a sale is a matter of law to be concluded from facts. Certain transactions may be a sale and certain transactions may not be a sale.

It must appear who the parties were and that their minds meet in a contract. It must appear

that all of the legal essentials exist, and where it is a written transaction, by deed— and in this case I take it the law would require a written transaction or conveyance by the Alien Property Custodian—the deed is the only evidence of what took place so far as the actual transaction is concerned.

We shall most earnestly object to going into any prior negotiations as to the sale, but if the Court should even allow the prior negotiations, objection to which is covered by our former statement, then they must state only the facts of what took place and when they took place, to the end that it may appear whether or not there was such a transaction as this Court would hold to be a contract or a meeting of the minds and how far that contract would be legal.

THE COURT: I think you have stated it, Colonel Anderson, in a much clearer and better way than the Court tried to express it in the statement to Mr. Kresel a moment ago.

MR. ANDERSON: I did not know whether I made that clear to the Court; and I wanted to be sure.

THE COURT: Now then, after these facts are assumed, if the word "sale" should perchance be used, it will be understood, I take it, to mean that aggregation of facts rather than a conclusion of law which must be drawn by the Court.

MR. ANDERSON: Will your Honor rule on the motion to strike out?

THE COURT: That motion is denied on the undertaking by Mr. Kresel that he intends to supplement that by the facts which you have referred to in your last statement and also on the understanding that the word "sale" as used by him meant only that and is not a conclusion of

law. That was my understanding of your undertaking, Mr. Kresel.

MR. KRESEL: Yes, your Honor, quite right. I will come back to this point in a little while. I am not going to follow it up at this time.

MR. ANDERSON: I suppose your Honor will give me an exception.

THE COURT: An exception goes to all adverse rulings.

MR. ANDERSON: I move to strike the last answer out, about the signing of the Executive order, as not the best evidence.

MR. KRESEL: The motion is to strike out because he cannot give the date when it was signed?

MR. ANDERSON: I mean to say that the order speaks for itself as to the date of signing.

THE COURT: What is the date of the order?

MR. KRESEL: The 26th of February.

MR. ANDERSON: I think it is the 26th. I am making this objection, if your Honor please—and I do not want to be captious, but in reading over this evidence yesterday it seemed to me that I probably was—well, not as careful as I should have been, and I certainly do not want to yield any rights here. But I do not want to be captious, I am trying not to be.

THE COURT: I did not know you were open to that criticism.

MR. ANDERSON: I am glad that your Honor does not think so, but I felt so; because I think, not in criticism at all, that a very large proportion of the evidence was elicited in answer to questions so indefinite and general as to be clearly objectionable on that ground according to my view, submitting of course to your Honor's better judgment and knowledge, and also that the answers were not responsive but were argumentative rather than direct responses to questions

of fact. I do not wish to be unreasonable, and do not wish to be unpleasant in this trial, especially with this witness on the stand, but I do wish to ask that in the conduct of these examinations we conform to the rules of evidence to the end that I may make objection and take exceptions in the proper way. So far as this particular matter is concerned and its materiality, if the answer is that it was signed on the 26th I do not care so much about it and I will withdraw the motion as to that, but I made the objection for the purpose of raising the leading question.

Q. 227. Mr. Palmer, I think you testified that you became Attorney General on the 4th of March—or 5th of March, you said?

A. On the 5th of March.

Q. 228. 1919?

A. 1919.

Q. 229. Shortly before that time did you see President Wilson?

A. Yes.

Q. 230. When was it you saw him?

A. Do you mean when I saw him last before that time?

Q. 231. Yes, please.

A. The evening of the 3d was the last time I saw him.

Q. 232. The evening of the 3rd of March, 1919?

A. Yes, sir.

Q. 233. At that time did you discuss with him the sale of these patents to the Chemical Foundation?

A. Yes.

Q. 234. I wish you would state now fully as nearly as you can, the conversation between the President and yourself upon that subject?

Mr. Anderson: For the sake of the record I wish to renew my objection as to this conversa-

tion, and base it with your Honor's permission upon the reasons stated yesterday so that I will not prolong the statement by a repetition.

THE COURT: The purpose, as I understand it, being to have the witness state particularly the information imparted by him to the President?

MR. KRESEL: Exactly.

THE COURT: And such statements of the President as will indicate what knowledge the President had of the matters here in controversy?

MR. KRESEL: Exactly, sir. It is to meet the allegation that the President, when he made the subsequent order, was acting in ignorance of all the facts.

THE COURT: I will take the answer.

MR. ANDERSON: Your Honor will understand that the objection includes the general objection of immateriality and irrelevancy.

THE COURT: I understand the objection to all testimony taken by either side includes all objections that are indicated by the opening statements of counsel and any specific objections made by counsel prior to the objection to the immediate question; and exceptions go without so stating, in each instance, to all adverse rulings. You may answer, Mr. Palmer.

A. Late in the afternoon of March 3, 1919, I called at the White House and saw the President, and spent about an hour with him. I explained that in view of my appointment as Attorney General I would place my resignation as Alien Property Custodian in his hands, and suggested that the business of the office required that somebody be immediately appointed to succeed me. He asked me if I had any recommendation to make as to my successor. I told him that I unhesitatingly and very strongly recommend that he

appoint Mr. Francis P. Garvan. I then explained to him who Mr. Garvan was, what his duties had been in the Alien Property Custodian's office, and the large extent and great value of his service in that office. I explained to him that I recommended him particularly, because, as I conceived it, the greatest and most important piece of work that we had on hand was the final actual consummation of the Amerizanization of the German chemical patents, and Garvan was more familiar with this situation than anybody in the country, had agreed to become President of the Chemical Foundation which was the instrument that we had created for the purpose of diverting these German chemical patents into general public use for the public benefit in this country, and I considered that so important a piece of constructive work on the part of my department that I was sure that if he agreed with me Garvan was the man to complete it.

I explained to him again what the chemical situation was, talked to him at length about the Chemical Foundation and what its purposes were, what we had in mind, the great work it could do in being the means of building up a great chemical industry for the advantage of the Government and the people.

Mr. Anderson: Just one minute, Mr. Palmer, if you please. If your Honor please I shall now interrupt the witness, to move to strike out the statements of the conversation with the President, on the ground in addition to those already stated that it is stating merely conclusions, and if a conversation took place and is to be recited, he must recite as nearly as possible what was said and what was stated. Everything is stated as as a conclusion, a view, an argument, and if the conversation is to be allowed the actual facts stated to the President and what the President actually said or the substance of what the Presi-

dent said should be given, and not the conclusion of the witness or the effect of it.

MR. KRESEL: I must say, your Honor, that I do not think that the witness's answer up to the present is subject to any such criticism, and I am sure that Mr. Palmer is giving his best recollection of what was said between him and the President.

MR. ANDERSON: I am not denying that. I am not denying that at all, but I mean to say that it is merely the effect of his conversation and not what was said or the facts stated. There has not been a single fact stated. Permit me to illustrate, if your Honor please. How in the world can I meet any evidence of this kind, assuming that I was going to try to meet it.

Suppose it was a conversation with the witness that I could give; the witness stated that he stated to the President the situation with respect to the chemical industry in the United States; that he stated to the President the plans that they had for the chemical industry in the United States, and so on. I might go on and recite his statements. Now, those are perfect conclusions as to what he stated, the effect of conclusions as to what he stated in his own mind, and not facts upon which an examination could take place or evidence could be adduced to meet a fact.

MR. KRESEL: But, Colonel Anderson, you did not wait until the witness had finished his answer.

MR. ANDERSON: But I objected to that part.

MR. KRESEL: Pardon me a minute. For all that appears, he may have gone on to say exactly what he did tell the President about the Chemical Foundation, exactly what he did tell him about the chemical industry. Now let him finish the answer.

If by that time he has not stated fact, then I can see some force in the point that you are raising.

MR. ANDERSON: A statement of facts is the only thing that can be stated at all. Up to this time it has been a statement of conclusions. Therefore, I thought it better and more courteous to object to the evidence at this time to the end that my objection might be known before the witness went on to make a long statement of that kind. I do not think the character of evidence that the witness is giving, with due respect to the witness, is evidence at all.

MR. KRESEL: Not at all. I do not agree with that. Suppose that all the witness had said to the President was, "I think this is important." Have I not a right to show that that is what he said to him?

MR. ANDERSON: If he said that, yes.

THE COURT: There may be some instances in the statement of the witness thus far in reply to the questions that are open to the objection of Colonel Anderson. I think it unnecessary for me to attempt to separate those from the others at the present time. It seems to me that the objection, Colonel Anderson, offered by you goes to the evidential value of the testimony, and I believe that we cannot finally weigh that evidential value until all the facts with respect to the answer of this witness have been had to the inquiry. You are not deprived by this ruling of the right to urge, at any time you see fit, the immateriality and lack of evidential value of any statements made by the witness.

MR. ANDERSON: I understand, sir. Without prolonged discussion, may I suggest to the Court this: that if I were trying to meet this evidence,

and it must be tested by that if it is admissible at all, would there be any possibility of my being able to meet as a fact the statement of the witness that he explained the chemical industry to the President of the United States?

MR. KRESEL: May I answer that, your Honor? Certainly, you could ask the witness, did Mr. Palmer on such and such a day explain to him the importance of the chemical industry.

THE COURT: It seems to me, Colonel Anderson, the question is admissible.

Q. 234 (continued). Will you proceed, Mr. Palmer?

A. I was simply trying to abbreviate——

Q. 234 (continued). Please do not abbreviate.

A. It will take me an hour to tell everything that took place in an hour's conversation.

THE COURT: You may take such time as may be found necessary.

Q. 234 (continued). Go on, Mr. Palmer.

A. I told him that at my instance the Chemical Foundation had been formed, and that it had been incorporated, and that the purpose of the Chemical Foundation, according to its charter and according to the agreement which we had with those who were organizing it——

MR. ANDERSON: I object to any evidence of agreement outside of the charter. The purposes of the corporation are fixed in the charter.

THE COURT: Colonel Anderson, this witness is not attempting to state as a fact what was in the charter; but he is stating what he told the President. If that is untrue, you will have an opportunity to meet it. You may proceed, Mr. Palmer.

(Answer to Q. 234 repeated as above recorded.)

A. (continued). ——was to issue non-exclusive licenses for these patents which were conveyed to the Foundation upon fair and reasonable terms to all persons or firms or corporations in the United States who desired to use the same, with the intention of building up a competitive chemical industry in the country.

That in addition to that it would do such other things as it might be able to in promoting and encouraging the building up of a general chemical industry in the country by educational means and otherwise. I did not have the charter before me and did not undertake to quote it exactly, stating only its broad purposes.

That the Government would be given a free license to use any or all of those German patents as might be necessary for Government purposes and that many of them, we believed, were of a kind which were highly important to the Government, in that the processes or products covered by them had been used by the Government during the war and would probably be used again by the Government both in peace and in preparation for another war or in another war, and that that, we felt, was a very large and important consideration, that the Government should have this free service.

I explained to him further that it was not a money-making proposition in any sense and that nobody was going to be permitted to make any money out of it; that we had, after much effort, succeeded in getting persons who were in the chemical lines of business in the country, a large number of them, to subscribe for the stock of the Chemical Foundation, with the understanding, which was to be amply secured, that in no event should their investment ever return them more than 6 per cent. per annum; that all earnings of the Chemical Foundation growing out of royalties on patents in excess of 6 per cent. per annum to the stockholders should be and must be used in general research

work and other work which in the judgment of its Board of Directors might be necessary to encourage and promote the building of a chemical industry in the United States.

I told him that in order to secure these purposes and to make certain that all of our plans were carried out not only in the letter but in the spirit in which they were conceived, I had made it a condition that the organization as it started should be named by myself, that its personnel should be of those who had been particularly and intimately associated with the work of investigating the German hold upon the chemical industry in America and those who by reason of that had collaborated with me most closely in building this organization and working out its plan and purpose.

I explained to him that that was the reason I thought Mr. Garvan ought to be president of the company and that I had directed that he should be elected. I told him that I had insisted with those who put up the money that, contrary to the usual plan, they should not name the directors or the officers, but I would do so and I would see that they were continued, by insisting that all future stock should be trusteed.

In order to make certain that that trust would be faithfully carried out and that our purposes would be executed by the voting trustees so far as they could, in the control of the corporation through the stock, I suggested as the voting trustees the five persons whom the President himself had appointed, most of whom he personally knew and who had served me as members of the Advisory Sales Committee during our sales program; and that that had all been agreed to and that Mr. Polk had signed the Executive order and the sale to the Chemical Foundation was an absolute, accomplished and finished fact.

MR. ANDERSON: I object to the last statement, sir.

MR. KRESEL: That is what he said he stated to the President. You can't strike that out.

THE COURT: Do I understand, Mr. Palmer, that all you are stating now is what you stated to the President?

THE WITNESS: Yes.

THE COURT: What the witness is stating is not the conclusion that the sale was an accomplished fact, but he is stating that he so stated to the President. His whole testimony is merely of what transpired at this meeting with the President. Motion denied. You may proceed.

A. (Continuing.) And that my purpose in urging Mr. Garvan's appointment as Alien Property Custodian was quite largely in view of the fact that he had undertaken to be the president of this corporation and I knew he could be absolutely trusted to carry out its plans and purposes to the letter and in their full spirit. I would not have felt so safe in putting this plan over if I had not been able to pick out from my organization men of that kind who could and would operate it not only as we wanted it to be run but with a patriotic desire to serve their country.

I told him that Mr. Choate would also be associated with the company. I am not certain that I at that time told him the names of the directors. I do not know.

I had with me the commission in blank as Alien Property Custodian, and after this statement the President took the commission and with his own hand wrote the name of Francis P. Garvan in the blank which I had left for the name of the appointee, and I took the commission and handed it to Mr. Garvan that evening.

Q. 234 (continuing). Mr. Palmer——

A. (continuing). Now, if I am to tell all about this conversation, you will have to let me go on.

Q. 235. We will come to that in a minute.

THE COURT: I understood the witness to say that he had not completed the conversation with the President.

MR. KRESEL: I did not so understand. I thought he was speaking of the conversation with Mr. Garvan.

THE WITNESS: Oh, no.

Q. 236. I wish you would continue the conversation with the President, because I was going to direct your attention to some portions of it.

A. From that talk we drifted into a more general discussion of the disposition of enemy property and I told him the amount of property which we had sold up to that time, in a general way. I cannot give now the details of what I told him as to the names of the properties and the amounts, but I remember that I made a report to him in a sketchy manner of our selling program and how it had been carried out and told him that I thought, with the program then on the way, when it was completed, that we would have rooted out of American industry and commerce the more obnoxious German interests and would have transferred them to American hands in line with our purpose in carrying out the act, and that I hoped the Peace Conference would make certain that that course of procedure with respect to the treatment of enemy property would be sustained and protected in the Treaty, and so forth. We had a discussion about the Treaty.

The President then said he thought it would be wise to have somebody representing the Alien Property Custodian at his side at the Peace Conference, somebody who was familiar with everything that we had done and the reasons for it and who was familiar also with the plan which I had outlined to him for the purpose of providing for and advising with Congress as to the future disposition of this enemy property.

He asked me if I had such a man who was available and who could be of service over there. I told him I had. He asked me who it was. I suggested Mr. Bradley W. Palmer. Mr. Palmer is no relation of mine. He is a Boston lawyer with the firm of Story, Thorndike, Palmer & Dodge, one of the leaders of the Boston Bar, who had been working in the Alien Property Custodian's office at a dollar a year, having charge of some of the more difficult problems which we had to handle, who was entirely familiar with the whole work of the Alien Property Custodian; and I recommended to the President that he be chosen. The President said that he would be glad if I would ask him to come to Paris at once. I saw Palmer that evening and in forty-eight hours he was aboard ship, Paris bound, and stayed there until the Treaty was signed.

We had some discussion also about the importance of the chemical industry in war and I told him of the developments which had come to my attention during the war, especially in Germany, where the dye plants——

Mr. Anderson: Just one moment, Mr. Palmer. If this evidence is intended purely as a statement of what the witness said to the President, under your Honor's ruling, I recognize that it goes in. If it is intended as evidential of any facts as to the chemical industry in the war, I wish to oject.

The Court: I assume it is not offered for that. The purpose of this, as I understand it, is to meet the allegation of your bill that the President was ignorant of what he was doing. What did you state your contention was, Colonel Anderson?

Mr. Anderson: I stated if it was merely evidence that the witness said these things to the President, whatever he said, then under your Honor's ruling, subject to my objection, I of

course do not wish to interrupt him. If it is intended to be used as evidence of the facts which he stated, then I do object and wish to be heard.

THE COURT: As I understand it, what the witness is now detailing is offered merely and solely as a conversation between the President and the witness and is not offered as proof of the facts so stated.

MR. KRESEL: That is the purpose, your Honor. Of course, some of the things that he told the President, he knew of his own knowledge, and as to that, those were facts.

THE COURT: No, I do not so understand this statement of the witness.

MR. KRESEL: This coming statement?

THE COURT: No. that any statement the witness may have disclosed to the President is evidence of anything more than a mere disclosure. If you want to get from this witness whether the statements made by him were true or otherwise, you will have to get that on independent questions and not now.

MR. KRESEL: All right, your Honor.

THE COURT: Is that your contention, Colonel Anderson?

MR. ANDERSON: With that limitation, of course, I will not interrupt to renew the objection, because it is limited to merely what he said to the President. Whether they were existing facts or not is a question to be determined later.

THE COURT: Correct.

MR. KRESEL: Will you proceed, Mr. Palmer.

MR. ANDERSON: I am compelled to call the attention of the Court to the fact that the knowledge that had come to his attention, and the importance of the German industry in war, is hardly a statement of a fact. It is a statement

that he had a lot of information, but what it is does not appear on this record.

THE WITNESS: I was going on to say what it was.

Q. 237. Will you go on, Mr. Palmer.

A. —which information was to the effect that the great dye factories along the Rhine, which during the war had been combined into one great institution under state guidance, if not control, had been converted during the war into practically munition plants; the by-products of the industry being of great value and importance in the manufacture of high explosives and noxious gases which the Germans had employed to a great extent in the war.

I expressed the opinion to him that we could never hope to equal that sort of performance, if we ever had to, unless we had a chemical industry of our own in this country; that my information had been that the Germans had a practical monopoly of it not only in Germany but in the world and certainly in America and that the way to break that monopoly was to carry out the plan that I had worked out.

In explanation of the manner in which they had been able to control the American monopoly, I explained to him that all of these patents which we had seized had been taken out by the Germans not for the purpose of promoting the development of the chemical industry but for impeding it and that as a general proposition they were used to keep down and destroy the industry in this country, rather than to build it up, in order that the German products might come here and control the market; that that was an additional fact which, in the history of these patents, had led me to have little compunction about taking them from the Germans and selling them to American interests. He was very familiar with the progress of the development of chemistry in the war.

THE COURT: Just a moment.

Q. 238. Did he state that?

THE COURT: Let us strike that out. Colonel Anderson indicated that he had an objection to that last sentence.

THE WITNESS: I am sorry.

THE COURT: I think the objection to that sentence is well taken. Will you strike it out. That is the statement that he was very familiar.

THE WITNESS: Do I understand it is improper for me to say what the President said?

THE COURT: Probably unconsciously, Mr. Palmer, you stated that the President was very familiar——

THE WITNESS: I meant to say he said he was familiar. Whether it was true or not I do not know.

He said he was familiar with the progress of chemistry on the other side, in the development of munitions particularly, and as I recall it, he told me he had publicly talked about it. But my recollection is not very definite about it. I think that about covers it, sir.

Q. 239. Did you in this conference with the President mention the number of patents approximately that were sold to The Chemical Foundation.

MR. ANDERSON: I object to the question as leading.

MR. KRESEL: After the witness has exhausted his recollection, I have a right to ask him that.

THE COURT: Objection overruled.

A. I certainly did. I knew about what the amount was, and I told him all about it.

Q. 240. What did you state to him upon that subject?

A. That there were all told perhaps more than four thousand of these patents.

Q. 241. And did you mention to him the cash price that was to be paid by The Chemical Foundation?

A. Yes, I said that, I think.

Q. 242. I do not recall your saying; but will you say it now?

THE COURT: He did cover that in his statement. You may get him to repeat it, if you desire.

MR. KRESEL: I do not recall it.

Q. 242. (Continued) You did tell the President that?

A. I told him the amount of the capital stock of The Chemical Foundation and $250,000 of it was to be used for the purpose of paying a cash consideration for these patents.

Q. 243. Did you mention to the President at that time your report?

A. I do not know. I cannot recall. It was then in his hands or had been transmitted by him to Congress.

Q. 244. In connection with that part of the conference referring to Mr. Bradley W. Palmer, I show you copy of a cablegram from Mr. Palmer in Paris, and ask you whether that cablegram was brought to your attention at or about the time of its receipt?

A. Although this was after I left the Alien Property Custodian's office, it was brought to my attention, as were all the messages from Mr. Bradley W. Palmer at the Peace Conference. They were all shown to me.

MR. ANDERSON: I ask to strike out the last part of it and make the answer responsive to the question, for two reasons——

MR. KRESEL: You do not have to assign any reasons. I will consent rather than have your reasons. I now offer in evidence this cablegram from Mr. Palmer.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 44." (*See Exhibits, Vol. IV, page 2312.*)

MR. ANDERSON: Have you the original of that?

MR. KRESEL: I haven't it here. I suppose it is available. Would you like to see the original?

MR. ANDERSON: No, I will not object to the introduction of the copy but I would like to see the original.

MR. KRESEL: I will see if I can obtain it.

MR. ANDERSON: You understand I am not objecting to the introduction of this.

MR. KRESEL: I understand.

MR. ANDERSON: But I would like to see the original.

MR. KRESEL: Your Honor, this is a cable dated Paris, April 23, 1919, and reads as follows: (Reads Exhibit.)

Q. 245. I now show you a copy of a cablegram sent by Mr. Garvan to Mr. Bradley W. Palmer in Paris, and ask you whether that is the answer to the cablegram just read, and whether it was brought to your attention at the time of its despatch? (Handing witness.)

A. It was, and that is the answer.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: Have you the original of which that is a copy?

MR. KRESEL: I suppose that is available.

MR. ANDERSON: I would like to see it.

MR. KRESEL: Colonel Anderson, my information is from the gentlemen who know that all these cables, or the original and copy of these two I am just introducing are in the State Department files; and you will recall, of course, that you put in here a portion of this very cor-

respondence. I think I should like to have all the rest of it produced from the State Department files. I just happen to have these two, there may be others I would like to use. May this be marked now.

Received in evidence and marked "Defendant's Exhibit No. 45." (*See Exhibits, Vol. IV, page 2313.*)

MR. ANDERSON: If you will specify, Mr. Kresel, exactly what you want I shall make every effort to get it from the State Department if it is in its files. I cannot bring the whole State Department files of the Peace Conference correspondence.

MR. KRESEL: No.

MR. ANDERSON: You have had access to them.

MR. KRESEL: No, we have not had access to them.

MR. ANDERSON: I do not know how we can get those, because I have never seen them.

MR. KRESEL: I should like to have produced, if you will, all other cablegrams from Mr. Bradley W. Palmer during his stay there in Paris at the Peace Conference.

Now I will read the answer, your Honor. It is dated April 24, 1919, addressed "Ammission." That is American Mission, I take it. It is addressed to Paris, for Bradley W. Palmer, from Garvan, and in that connection I may say that Defendant's Exhibit No. 44 also has the words above "From Ammission." (Reads Defendant's Exhibit No. 45.)

Q. 246. Do you remember, Mr. Palmer, how soon after this conference with the President on the evening of March 3, 1919, the President left the country to go abroad again?

A. I think he left Washington on the evening

of March 4th and left New York on the morning of March 5th.

Q. 247. Do you know Admiral Grayson.

A. Very well.

Q. 248. Did you speak to Admiral Grayson before the President again left the country to go abroad, which you say was about March 4, 1919, with reference to your report, Defendant's Exhibit No. 30? Just say yes or no.

A. Yes.

Q. 249. Did you give Admiral Grayson a copy of your report?

A. I gave him two copies, as I recall it.

Q. 250. What did you ask him to do with reference to those copies?

MR. KRESEL: Do you object to that?

MR. ANDERSON: I do. It is subject to the same objection I have made to all these conversations.

MR. KRESEL: I mean do you object to it because it is hearsay; is that the point?

MR. ANDERSON: I do.

MR. KRESEL: Very well, I won't press the question. Does your Honor understand that there is objection to this?

THE COURT: Yes. I did not grasp the nature of the objection.

MR. KRESEL: Will Colonel Anderson state it then?

MR. ANDERSON: In addition to the general objection which I have already stated, I object to all of these conversations, and I do not care to repeat all that unless necessary. This is a specific conversation with an Admiral of the Navy, whose position, of course, we all know perfectly well; but it is utterly immaterial to this situation, and a conversation between Mr. Palmer and

Admiral Grayson is purely hearsay, and therefore I object to it in any event.

Mr. Kresel: Is there objection to my stating——

The Court: I know your purpose; you have stated it to me before. But the hearsay is what?

Mr. Anderson: Of course, what he stated to Admiral Grayson probably is not hearsay but if he is going to ask for what Admiral Grayson said to him — if under your Honor's ruling this evidence is admissible I suppose he could state what he said to Admiral Grayson, but if you are going to follow up——

The Court: No, I am not sure it is, unless you are going to prove by Admiral Grayson a fact the nature of which was heretofore indicated in the several statements. Have you proposed to do that?

Mr. Kresel: I do, your Honor. I think, sir, I can clear it up by a letter which I am about to introduce.

The Court: Very well.

Q. 251. Did you receive a letter from Admiral Grayson, of which this is a copy? (Handing paper.)

A. I received a letter from him.

Q. 252. I would rather show you the original. Is that the letter you received? (Handing paper.)

A. Yes, this is the paper.

Q. 253. Do you know whether Admiral Grayson accompanied the President abroad on this trip?

A. He did.

Mr. Kresel: I offer this letter in evidence.

Mr. Anderson: I object, if your Honor please. What Admiral Grayson wrote to Mr. Palmer is not evidence of what Admiral Grayson said to the President. Admiral Grayson is available, subject to the subpœna of this Court, and

if they want to introduce any evidence from him, they will have to call him and subject him to cross-examination.

THE COURT: Are you offering this letter for the purpose of showing that Admiral Grayson carried out the request made by him to Mr. Palmer? As I understand it, you have stated heretofore that Mr. Palmer made a certain request of a person who accompanied the President, and I suppose he is now identified as Admiral Grayson.

MR. KRESEL: Yes, your Honor.

THE COURT: Then is not Colonel Anderson's objection well taken?

MR. KRESEL: No, I do not think so. I think that we have a right to show that Mr. Palmer, through anybody (I do not care who the agent was), brought to the President's attention certain facts or certain documents (in this case it is a document), and my sole purpose in introducing this letter is to show that it was delivered to the President.

THE COURT: But there is my difficulty. You are not offering sworn evidence of the fact that it was so delivered and you are only offering the signed statement of the Admiral that it was so delivered: I assume; I know nothing about the contents of the letter. That, as I understand the rule on evidence, does not have evidential value. I am reasonably clear on that. I think the objection is well taken. If you have any doubt about it, you may put the letter in under our general rule.

MR. KRESEL: I have adopted in this case, your Honor will have noticed, the rule not to take advantage of your Honor's very generous offer to let either side put in anything although the Court does not think it is material. I will not do

that. I may later call Admiral Grayson; I may not.

Q. 254. Mr. Palmer, bearing upon the salvarsan patents, do you remember an interview that you had with Dr. Stieglitz?

A. Yes.

Q. 255. Do you know who Dr. Stieglitz is?

A. I have known him to be a very eminent man in the chemical profession, if you mall call that a profession. I do not know whether he is a teacher or an active man. I really do not know. I have heard of him.

Q. 256. Did he come to you with a letter of introduction from Governor Fort of the Federal Trade Commission?

A. I think he did come that way.

Q. 257. And is that a copy of the letter (handing paper)?

A. He came to see me on March 4th, that day. I assume that is the letter he brought. It is a letter addressed to me. I do not recall it.

MR. KRESEL: I offer the letter in evidence. Any objection to that?

MR. ANDERSON: No.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 46." (*See Exhibits, Vol. IV, page 2513.*)

Q. 258. Will you state briefly the conversation that you had with Dr. Stieglitz upon this subject of salvarsan?

MR. ANDERSON: I object, if your Honor please. I do not see what materiality there is in a conversation between Dr. Stieglitz and Mr. Palmer after he had resigned as Alien Property Custodian on the 4th of March, when he said he tendered his resignation.

THE COURT: I will hear Mr. Kresel, because I do not understand the purpose, Colonel Anderson, and then I will hear you further.

MR. KRESEL: We offer this evidence to show what information was conveyed to Mr. Palmer upon this particular subject. Now, while it is true that the information was conveyed to him on the 4th of March, which I think was a day after he had resigned as Alien Property Custodian, it is nevertheless material, in my view, under the allegations under the Bill of Complaint charging conspiracy on the part of the dye interests to induce the transaction which is being here attacked. When Mr. Palmer resigned on the 3d of March, 1919, as Alien Property Custodian, he did not sever his connection as an official of the Government. He became the law officer of the government. The plaintiff has introduced here numerous exhibits connecting Mr. Palmer with this transaction long subsequent to the third of March, 1919.

THE COURT: For instance, what exhibits? I do not now recall.

MR. KRESEL: Let me see if I can recall some of them. As I recall it, in the Flush Tank transaction there is a letter addressed to Mr. Palmer subsequent to the 4th of March, 1919. I wonder if I could get the number of that exhibit. That is only one. I think in this series of correspondence —what is the name of that patent?

THE COURT: I recall those early documents. they were received on March 26th as having been received on March 25th, according to your contention.

MR. KRESEL: Yes.

THE COURT: But I was unaware heretofore of their being sent to the witness.

MR. KRESEL: There is no doubt that some were

sent to the witness. Moreover, as I recall it—of course, there have been so many documents here, your Honor, that it is difficult to remember them all——

MR. GALLOWAY: Was that letter introduced in evidence, Mr. Kresel?

MR. KRESEL: Which one?

MR. GALLOWAY: The one in March to Mr. Palmer, after he became Attorney General.

MR. KRESEL: I think it was. I am trying to locate it now.

MR. GALLOWAY: I do not think it was.

THE COURT: I do not know; but the letters that I recall were two. Mr. Kresel called attention to the fact that they were stamped as having been received March 25th. I understand what you have in mind.

MR. KRESEL: May I also say this, your Honor: We shall show that when the Alien Property Custodian, Mr. Palmer's successor, gave to the Government a free license on some of the patents (I think that was in February, 1920), but which was subsequently cancelled by the big licenses, as appears from the terms of it, that was delivered to the Attorney General of the United States as the law officer of the Government and representing the Government. We will show that.

In other words, Mr. Palmer's connection with this transaction did not really cease on the third of March. In his official capacity as Attorney General of the United States he still had connection with this transaction, and in view of the broad charge in the complaint that he was induced by this conspiracy to do what he did do in connection with this transaction, I think we have a right to show all the information that was available to him, If it is not too remote.

Your Honor will see this is the very next day after he resigned, and as I recall Mr. Palmer's testimony, he did not actually leave the Alien Property Custodian's office until the fifth of March.

THE WITNESS: I continued to be Alien Property Custodian until I qualified as Attorney General on the fifth of March.

THE COURT: And this communication was when?

MR. KRESEL: Fourth of March.

THE COURT: I will hear you, Colonel Anderson.

MR. ANDERSON: I thought it would be the quickest way to dispose of this matter to simply say Mr. Palmer terminated his connection with this matter officially. That he continued to occupy the position of Attorney General, no one questions, but there is not a suggestion in this bill that anything Mr. Palmer did as Attorney General is in question here.

But supposing he had continued until 1920 or 1921 to be Alien Property Custodian, why is a conversation between Dr. Stieglitz, of Chicago, and Mr. Palmer admissible in this case, if Dr. Stieglitz is available to testify to any facts he knows, if he told to Mr. Palmer any facts relating to this matter?

Therefore, if they want to prove any facts in connection with the matter within the knowledge of Dr. Stieglitz, and I assume he would not have told Mr. Palmer anything that was not within his knowledge, the person to call is Dr. Stieglitz to prove what he knew at that time. But certainly a conversation between Mr. Palmer and Dr. Stieglitz is not the best evidence of the facts in this case.

THE COURT: The only difficulty that I have now that the time has gone to the fifth day of March, Colonel Anderson, is this: The judicial department functions only on sworn statements or agreed statements of fact. My information is that it is the only one of the three departments that does so function, or whose duty it is to so function. Now, whether this was a misrepresentation or a correct representation and a truthful representation to the witness, I am wondering whether he would not have a right to disclose the information which came to him upon which he acted, without having the burden put upon him of staying his hand until after he had had each representation supported in such a manner as to enable it to be received in a Court of Law.

MR. ANDERSON: If your Honor please, I am not arguing now that Mr. Palmer, as Alien Property Custodian, or as Attorney General, would have to have the information presented to him under oath or as a Court. I am not arguing that. I am reserving very earnestly my objections to these various conversations for the reasons which I have undertaken to outline and others which appear of record; but I do object to an attempt to prove a fact in Court by what Dr. Stieglitz told Mr. Palmer.

THE COURT: There is no need debating that, because I concede that you are right on that, and I assume that there is no dispute about that; is there?

MR. KRESEL: None at all. I am simply trying to show what information this witness had.

THE COURT: Whether it was correct or incorrect?

MR. KRESEL: That is a matter which if we do not show by other evidence the Government can

argue is not proof of the fact stated in the information.

MR. ANDERSON: I do not want to put the Government in the position that it must go through this record and argue as to each of these statements that they are not proof of the fact, if there is any claim that they are proof of the fact. That is the reason I am raising this objection.

THE COURT: Let me ask this question: as I indicated yesterday, and I have been considering it at all odd moments since, as to whether the inevitable conclusion to be drawn from your allegations, although in a very courteous way you declined to charge the Governmental officials who were instrumental in the consummation of this transaction with fraud, and very graciously said that while they might possibly be guilty of legal fraud, you did not desire even to use that term in connection with them and you hoped you would not be required to prove actual fraud, or something to that effect (you were stating it much more graciously than I can) yet the tendency and the necessities of the case under the allegations of the bill seem to me to drive the plaintiff inevitably to this conclusion, particularly in view of the testimony in this case up to this point: That if this witness, knowing the facts which he has stated that he does know or did know, was the moving spirit in the consummation of this transaction, and in so doing became a party to the conspiracy, is there any escape from the conclusion that he was the most guilty participant in the transaction, those greatest interested in the dye and chemical industry not excluded? And if that conclusion of mine be in any degree sound, is it proper to deprive this witness, although not a party defendant,

of the opportunity of disclosing in full measure the information upon which he acted?

MR. ANDERSON: Your Honor has asked a question which I have to consider a little, because I want to answer it, with the witness on the stand, with the greatest frankness that I can. My respect for this witness and the consideration due him as a former high official of the Government of the United States and a distinguished citizen is such that I want to avoid saying anything which by any implication could be taken to have a different construction from that feeling.

I have always taken the view that actual fraud is a matter which must be drawn from the entire record, be argued before the Court upon the entire record, and should be very carefully avoided in the presentation of a case, where only the facts should be proved and let the Court draw its conclusion. Because fraud, of course, is a conclusion from facts proven, and not a fact.

Therefore, if it were necessary or if in the study of this case it should be deemed necessary to do what the Government of the United States may conceive it to be its duty to do, I should not hesitate to argue for any conclusion which might be drawn from the evidence, however reluctant I might be to do so. Because, of course, the witness himself would be one of the first to disclaim any idea that any citizen of the United States is above the law, as he said, the administration of the law was in his charge. Therefore, if it is consistent with a frank answer to your Honor's question I prefer not to argue the question as to what this record will disclose or may disclose at the present time without a very careful study of the record, and I certainly would not contend for actual fraud unless I felt the record clearly sustained it.

THE COURT: But I do not mean your personal——

MR. ANDERSON: I understand. I am speaking officially; I have no personal status.

THE COURT: I understand. But must I not now, so far as the admission of evidence is concerned——

MR. ANDERSON: I understand, and I was going to answer that.

THE COURT: (continuing) ——or any question with respect to evidence, have in mind your position? Not whether you have succeeded in establishing a case, but your contention; because whether you have established a case or not, or made out a case, is a matter for final determination

MR. ANDERSON: I understand, sir; entirely so.

THE COURT: But I am confronted with your contention, that contention which I stated a moment ago, though you have not put it so and it seems to me you have put the premises a little differently, must be borne in mind in reaching the conclusion. If that is true, I see no escape from it.

MR. ANDERSON: Let me go ahead. Would your Honor permit me?

THE COURT: I should be glad to hear you.

MR. ANDERSON: Because this is a matter on which I would like to make my position clear if I can in an offhand way. It is my view that the distinguished gentleman who is now on the witness stand entirely misconceived the meaning of this law and his duties thereunder.

THE COURT: I missed your last statement.

MR. ANDERSON: His duties thereunder. I say that with great respect for his views. But I think so; and that the Government was probably acting

upon a wrong theory of this statute. If that is true, it is perfectly proper for us to bring it to the attention of the courts.

Let us assume that the Alien Property Custodian at that time was wrongfully advised as to his legal duties. I quite agree with Mr. Palmer that if the office which he occupied at that time authorized him to discharge the duties which he outlined here and on the theory which he has outlined, then it was the most remarkable office in the existence of the world; I agree with his statement of yesterday, there is nothing to equal it in the history of the world, certainly since the Roman Empire. But I do not think so.

Let us assume now that he honestly entertained that view, which I do not question, and that the people who were interested in securing these patents — notwithstanding his statement of his participation in this matter; turning to other evidence in this case their purpose and aim are of record, contemporaneous record—took advantage of that view and of a natural enthusiasm to render what he conceived to be a wise public service to secure these patents under conditions which would be a violation of the rights of the United States. Then in such event the element of actual fraud, even though he assumed responsibility and even though he participated in this matter at the time in the manner in which he has described, might be entirely absent because of the want of fraudulent intent. It might be due to a mistake of law, a mistake of fact, or any other consideration, but which would not relieve the situation in any way. But I have proceeded on that theory. It must be obvious to the Court now that a great deal of the original record in this case was not available to the Government at all, and I assume the

most favorable theory for the officers of the Government. Will your Honor permit me to finish my sentence?

THE COURT: Yes.

MR. ANDERSON: I want your Honor to try this case and to admit evidence in this case on the theory that when we come to examine this record the Government is going to take any position which it conceives to be proper, observing every possible respect for those who have discharged the duties of high office, to take any position which it conceives to be proper to maintain and establish the rights of the people of the United States as it conceives them.

MR. KRESEL: I do not understand, your Honor, that we can try a case on that basis.

MR. ANDERSON: Then we stand on the allegations of the bill.

MR. KRESEL: We must know whether this plaintiff has set forth its claims in this bill of complaint.

MR. ANDERSON: Well, we have.

MR. KRESEL: We cannot be proceeding, trying a case in the dark, with the reservation on the part of the Government that it may take any position it pleases afterwards. That seems to me an extraordinary statement.

MR. ANDERSON: Let me explain my statement, if counsel will allow me to interrupt him. It may save him argument. What I mean, so that the Court and counsel may understand, is any position that it sees proper on the evidence and the pleadings in this case. They are the limit.

THE COURT: That is the reason I asked you to answer the question which I did.

MR. ANDERSON: Yes.

THE COURT: Because while, as it seems to me,

you had a personal desire not to inject into this case any elements of fraud that could be voided, it seemed to me that probably you were letting your personal inclinations control your legal judgment when you said that fraud would not be attributed to the Governmental officials. It seemed to me that what you subsequently did in your legal capacity negatived that personal expression, and consequently as I understand your last statement you hold yourself in readiness to charge all persons who participated in this transaction with actual fraud if you deem it in your legal capacity necessary or proper to do so at the conclusion of this case. Consequently, the defendant must be prepared to meet and must prepare itself by evidence, documentary or given from this witness stand, such charges. But before you proceed may I ask, Colonel Anderson, one further question.

MR. ANDERSON: May I first answer that question?

THE COURT: Yes.

MR. ANDERSON: Your Honor does not quite recall my statement. Your Honor asked, Do you charge fraud in this case? I said, legal fraud, yes, actual fraud, I hope not. That is the way I expressed it.

THE COURT: I think so.

MR. ANDERSON: That is the way the record reads. I have stated in this case any number of times that while I wanted to avoid the unpleasant incidents of a trial, as your Honor has indicated, we are presenting this case on the pleadings and we stand upon every position that can be properly taken under those pleadings. I stated that before we closed our case. And upon any proven conclusion which we can argue for upon the pleadings and the evidence in this case we shall feel at lib-

erty at the conclusion of this case to argue for it. I say that, as your Honor has said, as counsel and in presenting the case and in the argument of the case I am going to take that position with the greatest consideration that I can, not inconsistent with my duties.

THE COURT: Now then, the other question.

MR. ANDERSON: I beg your Honor's pardon.

THE COURT: As I understood you, at the concluding part of your previous statement, you said that many of the exhibits in this case, many of the documents, were not open to you. I did not understand you.

MR. ANDERSON: Your Honor has seen a number of papers or correspondence produced that are produced not from the records of the Government at all. For instance, as I stated to your Honor the other day, the original letter from Mr. Palmer to Mr. Polk, a copy of the letter, was not in our possession.

THE COURT: Do you mind telling me again what you said, because I did not get that fully, and after that I may want to ask you another question about it.

MR. ANDERSON: I will. I intended to say this: First, I called the attention of Mr. Palmer yesterday to the fact that those important letters of the President, the originals, were in his possession. I am not imputing any improper motives. We have never seen them before. We have never been able to find them and I am going to show that they are not in the office of the Alien Property Custodian, if I have to, if it is material.

There is proof here that a number of papers were packed up and sent away from the Alien Property Custodian's office. I have tried to avoid that unpleasant situation here and that is what I

referred to when I said that I reserved the question under Section 46 of the bill. Counsel and I have agreed that possibly we will not have to go into that question. If I have to, I will do it.

If the evidence was coming at all, I preferred it to come from their side and not from us. A number of these papers were discovered and returned to the Government two weeks before this trial started. Among them was a number of copies of letters to the President, a copy of the letter of Mr. Palmer to Mr. Polk, and other papers of great importance in this case. It was discovered by counsel among their papers and promptly returned to us.

Those things were not in our possession at the time. They are developing here. We had to draw this bill upon the facts as we had them. We are in a position to show here that many of the records, original records of the Alien Property Custodian, are not there; and when I say that, unless I have very definite evidence that it is in the possession of these gentlemen, I want to be most careful in making any suggestion of that kind, or certainly to asperse their motives in the matter.

I have made that statement for the reason that I think it is due the Government I should make it. I made it, I think, at the outset. I made it the other day when the letter to Mr. Polk was produced. I said that neither the original nor a carbon copy of that letter had ever been seen by us until two weeks before this trial.

The Government has been in a position where it had to draw its case upon the facts before it; and the delay in investigation here—I mean the delay in bringing this suit—of several months, we state in the bill, was induced by our inability to get hold of the records. Colonel Miller testified the other

day that there were no copies of these assignments, these fundamental papers on which this case is based, in the Alien Property Custodian's office when he went there.

I am not here to try that kind of a question, but I am saying those things in view of the claim here that the Government is guilty of laches, which as a matter of law does not amount to anything, because the Government cannot be guilty of laches. It is stated in the bill as a reason why this thing has been delayed.

I have not mentioned that because I imagined that when Mr. Garvan went on the stand, in view of the statement in the bill, he would probably explain that and I would rather the situation should come from him and not from me. My statement on the record, of course, is merely in response to your Honor's question.

THE COURT: I did not understand what you meant by the statement. I did not understand it and consequently did not know what you meant by it.

MR. ANDERSON: Have I made myself clear?

THE COURT: Entirely so. I did not understand the legal conclusion that you wanted me to draw from it. Mr. Kresel, I will be glad to hear from you.

MR. KRESEL: I think your Honor, that I cannot let this colloquy between the Court and Colonel Anderson go by without stating the defendant's position in the matter, and it is this: that the Government at all times had in its possession every document that has been produced in this case, including the copy of the letter that Colonel Anderson says was written by Mr. Palmer to Mr. Polk and which he says was not at the time of the drawing of the bill available to him.

MR. ANDERSON: Well, now——

MR. KRESEL: I do not mean to say that Colonel Anderson is telling something that is not a fact, to his knowledge.

MR. ANDERSON: I want to hear Mr. Kresel and then I will reply.

THE COURT: I will hear you at the end of Mr. Kresel's statement.

MR. KRESEL: For example, your Honor Colonel Anderson says that the Government did not know of these letters from the President to Mr. Palmer, some of which Mr. Palmer produced here yesterday. Copies of those letters were on file at the White House. The fact that Mr. Palmer had the originals did not deprive the Government of knowledge of those letters.

He says that there were no copies of the assignments to us in the files of the Alien Property Custodian. Assuming that it be true, the fact is nevertheless true that the originals were on file and on record in the Patent Office. He says that he has proof in this case that two boxes of papers were taken away from the Alien Property Custodian's office and sent to the Chemical Foundation. He has not stated to your Honor that it appears from the letter which he calls the proof that the two boxes contained copies of demands and copies of assignments of the very patents that are included here; muniments of title to which this defendant was entitled.

That no secret of the fact was made that they were shipped to the Chemical Foundation is shown by the fact that the Government has been able to produce the letter written by Mr. Goldstein, of the Alien Property Custodian's office, to Mr. Hoguet advising him that the shipment was being made.

There have been hints here and there that documents were taken away improperly. We resent that. They have made the statement in their Bill of Complaint that documents were sent to the Chemical Foundation. We had assumed that when they put in the letter of Mr. Goldstein with reference to those two boxes, that that was their their proof, and we were willing to meet it.

Now, if they have got any other proof on the subject, let them produce it. But this business of stating here that the Government did not know the facts is unfounded. These attacks upon the Chemical Foundation and the chemical industry here have been the subject of five investigations before Congressional committees. Surely, the Government knew everything about those. Why, this Chemical Foundation has been investigated, as I say, five times from top to bottom and the Government knew and was chargeable with knowledge of everything that has been brought out here today or ever since we started this trial.

Not a new thing has been developed. And for the Government to come in here now and plead at the breaking of their case that they did not know the facts when they drew their bill of complaint is disingenuous, to say the least. They knew everything and we resent any imputation that anybody connected with this case took away any documents that he was not entitled to. You may answer.

MR. ANDERSON: All right, sir.

I am not going to indulge in epithets, if your Honor please. But since this question has been raised, much to my regret, possibly through an inadvertent statement of mine, I am going to state the facts and, if necessary, I am going to prove the facts.

MR. KRESEL: Now, I object to any statement of facts upon a subject of this sort. If there is any proof, let it be produced.

THE COURT: Colonel Anderson, you have stated your point. Mr. Kresel has stated his. Is there anything further to discuss?

MR. ANDERSON: There is, sir, because there have been statements made here that, I take it, I am disingenuous, which is one of the few suggestions I have ever had of that kind—I think probably the first I ever have had in court; and, therefore, I shall claim the privilege of replying to that statement.

THE COURT: I am going to give you that privilege, Colonel Anderson; but I hope that you will not, under the plea of personal privilege, which shall not be denied you, go further afield than if you replied to that statement tomorrow morning instead of this morning.

MR. ANDERSON: I am not. Your Honor rather implies that I am irritated by it. I would be out of court, but I am not in court. I am here officially and therefore I will not be any more irritated at the bar than I would if I were on the bench. So you are not going to find me overstepping the limits of what I conceive to be propriety because of any irritation.

THE COURT: But isn't it this, Colonel Anderson? I have led to this by what I have deemed and what I now consider necessary in order to determine the admissibility of a letter. You have both gone a little far afield.

MR. ANDERSON: Possibly.

THE COURT: Now, then, I do not see that there is anything that calls for a reply. You will have the opportunity, if you want it. It seems to me that we are discussing here the admissibility

of statements made to the witness on the fourth day of March, 1919. The consideration of that question brought up other questions as incidental thereto. It seems to me that is the question that is before me and that other questions are immaterial. I do not see that there is any particular reason for claiming personal privilege, but I am going to let you be the judge of that and not myself.

MR. KRESEL: I made no reflection upon Colonel Anderson personally. I do not see whether the question of privilege comes in.

THE COURT: What is that?

MR. KRESEL: I say, I have made no reflection upon Colonel Anderson personally whatsoever and did not intend to.

THE COURT: That was my understanding, Mr. Kresel.

MR. ANDERSON: I think the charge that the Government had been disingenuous and the flat denial of my statement that the Government did not have these papers available, according to my view, would, outside of the court room be regarded as a very serious reflection; but in the court room I am going to treat it in an official way. Therefore, I am simply going to say, if your Honor please, that the Government did not have these papers available.

THE COURT: Now, you made that before, Colonel Anderson.

MR. ANDERSON: I know.

THE COURT: I know, but that was made surely in support of your case. The defendant denies it. If that becomes an issue in this case, let us not debate it.

MR. ANDERSON: In the second place——

THE COURT: There has come an issue of fact,

not of veracity between counsel. If in my judgment your integrity or veracity were challenged, I should be very glad to hear you.

MR. ANDERSON: Then I understand your Honor does not wish to hear the subject discussed any further and I withdraw——

THE COURT: I think you have indicated on each side a difference of view with respect to certain facts in your professional capacity.

MR. ANDERSON: There has been a recital of facts by counsel on the other side which he claims supports his view. I have not recited the facts in connection with those matters. He makes specific statements of that kind. I will either reply to them or not, as your Honor desires. Unless I can reply to them fully, I do not want to reply to them at all.

THE COURT: Colonel Anderson, I am hearing you at length because I realize you are taking an entirely different viewpoint with respect to the matter. It seems to me you have each stated your view of the facts fully and frankly and you differ. There is no challenge of either side of improper motives.

MR. ANDERSON: I do not think I have stated the facts fully in reply to those statements made by counsel, but this is your Honor's court, and I never argue with a Court. If your Honor does not feel that it is desirable or necessary that I should make any further statement on the subject, I am perfectly willing to take my seat and drop the matter there.

THE COURT: One mistake you made there. This is not my court. This is a court of the United States for the District of Delaware, of which I am a mere incident. While sitting on this bench, I am functioning, not in any personal capacity whatsoever, but purely in an official capacity.

MR. ANDERSON: I am addressing your Honor in your official capacity. As an official, you are the presiding Judge of this court, and what you say goes in it as far as I am concerned, and I am not going to argue.

THE COURT: Colonel Anderson, it seems to me that you are entitled to do this: If you disagree with counsel as to the statement of facts, as to your view of the facts, you are entitled to say so of record. You have expressed your view and Mr. Kresel has expressed his. Now then, if you want to reaffirm that the statement made by you can be established by the facts, that is all right; but we are getting into a matter that is purely collateral, and, it seems to me, foreign to the issue.

MR. ANDERSON: If that is your Honor's judgment, I waive any personal claim whatever. I never make a personal claim in court.

THE COURT: I thank you.

I think the objection to the letter offered in evidence is not well taken. It is now admitted.

MR. KRESEL: There was no offer of a letter, your Honor. It was as to a conversation.

THE COURT: Yes. The witness was asked to detail the conversation had between him and Dr. Stieglitz on the fourth day of March, 1919. Will you proceed, please, Mr. Palmer.

A. I had a very brief conversation with him. He started to talk about salvarsan and its tremendous importance and the importance of the patents. I explained to him that that was my busy day; I was cleaning up my desk to get out; I was leaving, and I really could not talk to him at length. I asked him if he woud not commit to writing his views and what he desired to present to me; and he said he would.

By MR. KRESEL:

Q. 259. And did you subsequently receive from him a letter upon the subject?

A. I did.

Q. 260. Just look at that and state whether that is a copy of the letter?

A. This is a letter I received from him.

(At this point a short recess was taken by direction of the Court.)

MR. KRESEL: I would like to mark this, please.

THE COURT: Is the letter offered?

MR. KRESEL: That was offered. Colonel Anderson was examining it when we took the recess.

THE COURT: What is its date?

MR. KRESEL: Dated March 14, 1919.

THE COURT: Admitted.

Letter received in evidence and marked "Defendant's Exhibit No. 47", memorandum annexed "Defendant's Exhibit No. 47-A." (*See Exhibits, Vol. IV, pages 2314 and 2316.*)

MR. ANDERSON: Would your Honor permit me, in addition to the general objection, to renew my objection to that letter on the ground that it was addressed to the witness after he had retired from the office of Alien Property Custodian and addressed to him as Attorney General of the United States and not as Alien Property Custodian. It has statements of fact in there, and is introduced for the purpose of stating the fact which the writer should be called to make, and not be proved by a letter from a person we know nothing about, to an officer who had nothing to do with this transaction; and therefore we think it is entirely incompetent and inadmissible for these reasons, in addition to the reasons we have urged in the objections reserved to this testimony.

THE COURT: It has been admitted not as proof

of the facts therein contained, but as statements made to the witness prior to the execution of the assignment.

Q. 261. Upon receipt of this letter did you send it to Mr. Garvan, who was then Alien Property Custodian?

A. I referred it to the Alien Property Custodian, yes, sir.

MR. KRESEL: I want to read two paragraphs of this communication: (Reads from exhibit.)

MR. ANDERSON: If your Honor will permit me, in view of what has been read, I renew my motion to strike out this letter and the testimony in relation thereto, including the conversations with Mr. Palmer, for the reasons already stated; and directing attention especially to the letter, it will be observed from reading it that it is, I presume, read to have your Honor know that this gentleman, who was Chairman of the National Research Council and recommended certain things, and the papers attached, are his reasons for making the recommendation. Therefore, I respectfully suggest again that the only competent evidence of his reasons, if it were competent at all, would be the testimony of this witness.

I conceive that it would be impossible to separate the facts from the facts that were communicated to the witness, even if that were material, and if the letter were read before a jury, which of course is a test of evidence, it would be most prejudicial, if it had any relevancy whatever, which I do not think it has to the case, to introduce the views of this witness, his recommendations, etc., and have them read in that way without an opportunity for cross-examination or for testing his knowledge. I present that very earnestly, because I feel that that class of evidence is

wrong. I am not going to insist upon it further than that.

THE COURT: I admit it not as proof of the facts, but as representations made to this witness and referred by him to the then Alien Property Custodian prior to the date of the assignment to the defendant in this case. I doubt myself whether such evidence will eventually be found material in any way, even though those facts were true, to the decision of the issues in this case.

Q. 262. Mr. Palmer, do you recall a conference with representatives of the War Department about the disposition of these chemical patents?

A. I do.

Q. 263. There is in evidence here a memorandum made by you of that conference, and I mention it only to fix the date. Do you recall the date of the conference?

A. January 12th, I think.

Q. 264. February 12th is the memorandum.

A. February 12th.

Q. 265. Now, will you state what that conference was, as briefly as possible?

THE COURT: Same objection, I assume, Colonel Anderson.

MR. ANDERSON: Yes, sir. In addition to the usual objection, I should suggest, if we are going to have this evidence at all, that we ought to have the date, time, place, persons present and what they said, and not what the conference was.

Q. 265. (Continued). You understand that to be my question, Mr. Palmer?

A. Yes, sir.

MR. ANDERSON: And who said it, and what was exactly said.

MR. KRESEL: I understand that there is objection to his stating what was said?

THE COURT: There is the general objection

to stating what was said; but that is overruled. The suggestion that the witness give the time, place and persons present is I think a good one.

MR. KRESEL: May I ask whether the Government objects to the giving of this conversation, in view of the fact that the Government has introduced what purports to be a memorandum of that conversation made by these army officers?

MR. ANDERSON: Then the contemporaneous memorandum is the best evidence of what took place.

MR. KRESEL: In other words, we are bound, are we, by a memorandum made?

MR. ANDERSON: I thought it was a memorandum made by Mr. Palmer.

MR. KRESEL: Even so, and I do not know whether it was introduced, but even if it were, hasn't he the right to give the conversation? In other words, what I am questioning is whether the Government is raising objection to giving this conversation in view of the record.

THE COURT: I understand Colonel Anderson stands by the objection that he made. You may proceed Mr. Palmer.

A to Q. 265. (Continued). On the 12th of February, 1919, three Army officers in uniform called at my office, the office of the Alien Property Custodian, 16th and P Streets, Washington. They were named Holcombe, Swenarton, or Swinnerton, or something of that sort. I do not remember their rank. They were officers in uniform; and a third officer whose name I have forgotten. I am not sure that I knew at the time.

As I recall it, Holcombe—Major Holcombe, I think—was the spokesman for the party, and he said they came from the War Department to discuss with me the matter of the patents on dyes and chemicals; that there were many of them in which the War Department was interested; and he handed me a letter,

I think it was signed by himself, which contained what he desired to present. I read the letter.

Q. 266. I will ask you to stop there a moment. I show you this letter, Plaintiff's Exhibit No. 87 (handing witness). Will you state whether that is the letter that they presented?

A. Yes, that is the letter.

Q. 267. Now will you proceed?

A. After reading the letter and listening to his statement, which was along the same lines, I explained to him that his proposal that I should sell to the War Department, or should seize all the German patents and sell them all to the War Department at wholesale, was quite impossible, I could not consider such a thing for a moment, that it would mean an entire abdication of all my power and authority in the premises and was contrary to my arrangement with the Federal Trade Commission, which arrangement I explained to him as I have heretofore explained it on the stand. He then asked if an arrangement would be made by which the Government could be given free license to use such patents as the Government might need for its own use from any purchaser of these patents to whom we might sell them, and I told him that that was considered as a part of our policy, and that I would suggest that he see Mr. Hoguet as to the working out of that part of it. Immediately after the conversation I made a written memorandum of it and left it in the files.

Q. 268. Mr. Palmer, I read from this letter, Plaintiff's Exhibit No. 87, which Major Holcombe presented to you, the following:

> "It is belived that whatever action can be taken with respect to any patents of the classes referred to should be taken with respect to all enemy-owned patents. The amount of labor involved in investigating and determining what patents the Government will require protection

against is much more than would be involved in drafting blanket terms of sale for all enemy-owned patents, whether relating to war materials or not, for the purpose of ensuring adequate protection to the United States therefrom."

Did Major Holcombe and his associates who were there state that their desire was that you should execute a blanket form of sale to the War Department for all enemy-owned patents?

A. They wanted me to seize all the patents in this country owned by Germans and sell them all in one blanket assignment to the War Department.

Q. 269. At that conference did these gentlemen discuss with you specifically the nitrate patents?

A. I do not recall that they did.

Q. 270. Now I show you Plaintiff's Exhibit No. 88, and ask you whether that is the memorandum that you say you made of the conference on the same day that you had the conference (handing witness)?

A. That is a copy of it.

Q. 271. Yes, of course.

A. Signed by my initials.

Q. 272. Did you fix the price of $250,000 as the money consideration for the sale of these patents to the Chemical Foundation? Do not answer yet, please.

THE COURT: The question is leading, Mr. Kresel, and the Government objects to leading questions.

MR. KRESEL: I am sorry, sir.

Q. 273. Please state what conversations you had, and with whom, with reference to the money consideration and the other conditions of the sale of the patents to The Chemical Foundation?

A. My conversations with reference to the consideration were with Mr. Hoguet, Mr. Choate and Mr. Garvan, who were representing me in negotiations and conferences with the persons who were to organize the Chemical Foundation and supply the capital.

Q. 274. Will you state as briefly as is possible under the circumstances what you said upon the subject, and if you gave any reasons therefor you will state those?

A. I told them that I felt that if the other conditions which we were imposing were complied with, satisfactorily arranged for and secured, they would constitute a very large consideration for the transfer, and that there should, however, be a fair money consideration in addition thereto. Who first suggested as the money consideration the sum of $250,000, in those conferences that I had with them I am not certain, but I know that I approved it and finally fixed it as the cash consideration for the transfer.

MR. ANDERSON: Would you mind having him state the date of this.

MR. KRESEL: I will.

Q. 275. Will you as near as you recall state the date when that was determined on by you?

A. Well, that was during February.

MR. ANDERSON: Can he be more specific?

THE WITNESS: Of 1919.

MR. ANDERSON: Can he be more specific?

Q. 276. Can you fix it more specifically?

A. I cannot very well fix it more specifically than that, I had so many conferences with them about the details of this matter. It was before February 22d, I know that, because on February 22d, I closed up the report and signed the letter of transmittal to the President, and by that time I had fixed the price. So that it was some time between early February and the twenty-second.

Q. 277. You said if the other conditions were complied with and secured. You have not yet stated what the conditions were.

A. What I meant by that was that a corporation should be organized which would be willing to accept these patents either subject to a reservation that the

Government should have the free license to use them for its own use during the life of the patents, or by agreement make a subsequent conveyance to the Government for the same purpose, each of which would have the same effect.

MR. ANDERSON: I move to strike out "each of which would have the same effect," sir.

MR. KRESEL: I consent to have the words "each of which would have the same effect" stricken out.

THE COURT: It may be stricken out.

Q. 278. Proceed, Mr. Palmer.

A. And the understanding that we had would be properly arranged and secured, to make certain that the corporation would issue non-exclusive licenses on equal terms and upon fair and reasonable royalties to all applicants for the use of these patents, and generally have the corporation so framed, by its charter rights, duties and responsibilities, and its organization, as would ensure to our satisfaction the purpose which we had in mind of using it as a mere conduit through which these patents should flow for general public use in building up a great chemical industry in the country, to the end that the people might have the benefit from the development of pharmaceuticals and medicines and the Government might have the security which would come from its ability to control the development of the science in the manufacture of munitions, the preparations for war, etc. Those things were done as I planned them to be done, the details satisfactorily worked out, and I considered $250,000 additional in cash as the fair and reasonable price, and I accepted it as so fixed.

MR. ANDERSON: I object to the last statement about his opinion as to the value.

THE COURT: I think it has value apart from that, or may have value apart from that. I deny the motion.

Q. 279. Had you finished, Mr. Palmer.

A. Yes, sir.

MR. ANDERSON: The witness is finished, so I now ask your Honor to strike out so much of the answer to this question as relates to any matters which are not shown in the agreement of transfer of these patents to have been the considerations named for the conveyance thereof. In other words, what Mr. Palmer, Mr. Hoguet and Mr. Choate may have agreed upon, in whatever capacity they may have been acting, is concluded by the subsequent deed to this property, and a consideration not named in that deed or indicated in that deed is not the subject of evidence, as outside of the written instrument causing the conveyance.

THE COURT: My understanding was that the witness was asked first about the cash consideration and then the other conditions that he required in connection with the transfer, the primary purpose being, as I understood the questions, to ascertain the grounds upon which this witness in his official capacity determined that $250,000 was an adequate cash consideration for these patents.

MR. KRESEL: Your Honor is entirely correct; and I had not concluded that branch, I was going on to another question on the same subject.

THE COURT: I am not passing on the weight of the testimony, nor am I receiving the evidence to change any of the conditions under which the patents were transferred or to indicate there were any other conditions. For such other purposes as it may be used, the evidence will be permitted to remain, and the motion denied, with an exception noted.

Q. 280. Mr. Palmer, in fixing the cash consideration at $250,000, did you have in mind and did you

convey to these gentlemen with whom you were conferring about it the reasons for considering, as you have testified, that $250,000 in cash and these other considerations constituted a fair and reasonable price for the patents? If so, will you please state those reasons.

MR. ANDERSON: The question is objected to, first, because it indicates clearly, I think, the answer; in the second place, what the witness had in mind is certainly not a matter for consideration here. To make my objection clear, though not to argue, I respectfully suggest that the matter was concluded by the Alien Property Custodian who was the successor to this gentleman.

THE COURT: That is your contention.

MR. ANDERSON: I used the expression "concluded." The conveyance was made, there can be no question about that. We will stick to the record. The conveyance was made in writing. The conveyance was made officially by an acknowledged instrument. If these gentlemen had in mind getting ten million dollars for these patents, if they had discussed getting ten million dollars for these patents, and if they had agreed upon selling them for ten million dollars, it would not be evidence in this case, when they sold them for $250,000 and the instrument states the consideration. I may add, sir, that the question as now framed does not state his answer to the preceding question.

THE COURT: I think this question is improper in form and I shall sustain your objection on that ground; but inasmuch as you make a second objection, I do not see in view of your statements, how I can assume that the motives of the officers who participated in this transaction will not be attacked in the final hearing on this case or the appeal. Consequently, I shall take the answer and permit

the testimony called for in substance by this question to be received if the question is put in proper form.

MR. KRESEL: Your Honor thinks the question is objectionable in form?

THE COURT: Objectionable in form.

MR. KRESEL: I will try to reframe it.

Q. 281. Please state, Mr. Palmer, all the considerations that moved you to fix the price at $250,000 in cash upon the conditions that you have named, and state whether you conveyed these reasons or motives to Mr. Garvan or Mr. Choate in these conferences you have been telling about?

A. Well, all the reasons that actuated me in fixing those prices, to answer the last part of your question first, were conveyed by me to these gentlemen, Hoguet, Choate and Garvan, in the conferences which we had on the subject. There were many reasons which led me to that conclusion, most of them based upon information which I believed to be correct and which I had gathered from sources in which I had confidence. Some of them, of course, not many, because I was no chemist nor patent man, based upon my own knowledge. In the first place, without regard for the character of the purchaser and the conditions under which the purchaser was to operate these patents, passing that by for the moment, it was obvious that the value of the patents under the peculiar circumstances was not to be fixed as patents are ordinarily valued.

They had been seized by me from their owners, who were hostile, of course, to us, and very bitterly opposed to that act, as I knew. Not only, therefore, would the purchaser get none of the benefit whatever of the knowledge of the inventor and the original patentee, which in the usual sale of patents is always provided for to be given to the assignee, but the purchaser would have the active, I knew, hostility and

opposition of the inventor and patentee. Not only could he not get any knowledge of how to work the patent from the Alien Property Custodian, who was selling it, but he could not get in touch with the original owner and patentee, because he lived 4,000 miles away across the sea.

So that there was grave doubt as to whether the patents could be utilized successfully in this country. My information was that if they were to be utilized with any degree of success, it would only be after a tremendous amount of research and study by experts, experiments and other work, which would entail a large amount of time and effort and great expense. So that the value of the patents, therefore, was reduced, or I felt that that had to be very seriously taken into consideration before fixing any value.

In addition to that, under the Trading with the Enemy Act, ever since the beginning of the war the Federal Trade Commission had been issuing licenses to use these patents. There had been built up in the country something of a chemical industry, forced by the necessity of the war situation to grow to some extent, and this industry was watching these patents, and they had taken out some licenses from the Federal Trade Commission, and the sale that I was to make had to be subject to the rights of all licensees: As a considerable time had gone by since the beginning of the war, I did not doubt that the most valuable of the patents had probably been taken up in that manner.

Q. 281. (continued) You mean by licenses?

A. By licenses from the Federal Trade Commission, and that they were being used in the country. Whether those licenses would be surrendered to the Federal Trade Commission and new licenses taken out from the person who purchased from me or not, I had no means of knowing. I did not anticipate that they would be taken out from the new purchaser, so that

the purchaser was bound to take these properties subject to, from what my information then looked like, the use of them by others in the industry to a very considerable extent.

I may say that another reason which impelled me, and which I discussed with these gentlemen at that time was this, a matter to which I had as Alien Property Custodian given public expression before that time: these patents were taken out by the enemy persons originally in open, and to my mind flagrant violation of the spirit of our laws. The Germans had violated our hospitality, if I may call it such. They were, after all, mere privileges granted by the Government under an Act of Congress——

MR. ANDERSON: If your Honor please, I do not want to interrupt this witness; but the laws of the United States are matters of record. The acts of persons who take out patents under the laws of the United States are matters of record. If these patents did not conform to the law, then there was no reason for seizing them, because they were invalid anyhow, and the Alien Property Custodian in seizing them accepted them as legal documents, as a purchaser would. If they did not conform to the law, they gave nobody any rights, alien or anybody else. If they did conform to the law, then whatever rights the patentee got the Alien Property Custodian got subject to any existing licenses.

Now, it is obviously impossible for this witness to know the motives and purposes of people in Germany. He may be able to say, if he knows, whether anybody was actually using the patents in this country, that is, provided he can say so in a manner provided by the law with respect to proof of the use of patents. But for the witness to undertake to go into an argument of the fact

that the Germans had certain motives and somebody else had some motives, and that they had violated the spirit of a law is not evidence. There is but one thing that violates a law, and that is, a violation of the law, and therefore that involves a question of conclusion at which it is sometimes very difficult for a Court to arrive, and certainly is not a matter for the testimony of a witness. I therefore move to strike out all that part of the answer for the reasons stated, in addition to the objections already made to this testimony.

THE COURT: The motion is denied. The witness is giving his reasons for acting as he did. As I understand your statements, you hold yourself in readiness to take the position at the final argument of this case that the bill of complaint is an indictment against Mr. Palmer and others of like position. I think, therefore, Mr. Palmer is entitled to show the reasons which moved him to act in this matter. Whether those reasons were legally sufficient is another question.

MR. ANDERSON: May I suggest, then, sir: the bill of complaint, of course, I am not going to undertake to construe, and that is the limit of our rights in this case, no matter what I say here either one way or the other. In the second place, as I understand it, even in the case of a man charged with fraud, he cannot testify as to his motives; he can only testify as to facts. Well, there is no charge of fraud in that bill against Mr. Palmer. Therefore he can testify as to facts within his knowledge, but I respectfully submit to your Honor that even in a direct charge of fraud no man can get on the stand and testify as to what his motives were and his reasons.

THE COURT: I think, Colonel Anderson, you are probably right. I am not passing upon the

materiality or the weight of this, any more than I pass upon the materiality of the evidence of Mr. Metz, and particularly much of the documentary evidence that was introduced by you. I am leaving you to show its value, or the defendant to show its lack of value, at the final hearing. This testimony is of the character that it will be admissible under our general rule, and I do not now express any opinion or indicate any opinion by permitting it to be taken under our general rule.

MR. ANDERSON: Your Honor, I would like to state then that I will ask leave on the rebuttal to go into this whole question. Your Honor has indicated it is his purpose to limit the rebuttal, and in that event I shall have to give notice now that I will ask leave at that time to go into the whole question.

In addition to that, I take it that this evidence in any event can be received only as evidence of purpose, motive and intent, and not of the facts stated. For instance, certainly this witness cannot testify as to the motives in the minds of the Germans in taking out patents in the United States.

THE COURT: No.

MR. ANDERSON: And it is either taken as evidence of intent and motive on his part or it is not evidence at all, because it cannot be evidence of fact.

THE COURT: You may proceed, Mr. Palmer.

A. (continuing) I was stating what was one of the facts which led me to fix this price.

THE COURT: I rather gathered that you were stating one of the reasons that led you to fix that price, from facts as you understood them and not facts as you now represent them actually to be.

A. (continuing) I think I said what my information was and I was acting upon that information.

My information was that these chemical patents had not been worked in this country and I had a fund of information which led me to be satisfied that it was a fact that they were held by the Germans for the purpose of making it possible for them to import their products into this country and make it impossible for an American industry to develop and grow up into any size.

I believed that since that was plainly contrary to the purpose of our patent laws, as indicated by the Constitutional provision that patents might be issued to promote the sciences and the useful arts, and it having been a privilege granted by the Government which had been thus abused, in any accounting that the Government might make thereafter, or after the war, for such property taken, it could not under those circumstances be expected to any more than compensate the patentees for the cost of taking out the patents, at the outside, and this cost, of course, was comparatively small, a matter of $50.00 apiece or something in that neighborhood; and, the patents having on the average run half their time, on any such basis as that, $250,000 in itself would have been a large consideration.

Then there was, of course, the very important element, that in making the sale, I was not warranting the title. I was giving simply a sort of a quit claim.

MR. ANDERSON: I wish to move to strike that out, if you Honor please, on the ground that the instrument of sale is in writing and the legal construction thereof is a question for the Court and not for the witness.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: No, your Honor, I do not think I need answer that.

THE COURT: Motion denied.

A. (Continuing.) And the purchaser was bound to face serious question and possibly extensive litigation before he could profitably operate under them, as there was always the possibility that the ownership of some of the patents might have passed out of German hands lawfully before I seized them. I might have taken patents that did not belong to the Germans, either inadvertently or because I did not have the facts before me. And there might be a recovery of a very considerable number of such patents. Patents might, for instance, have been sold to neutrals, when there was under the law a perfect right for the enemy to sell these patents to neutrals. And I might find that while I was purporting to convey a very large number of patents, I was not in fact conveying them.

In addition to that, there was of course the consideration that as these patents never had been operated in America, had never been worked here, when they began to work them they might find themselves opposed by others who claimed that they were infringing American patents. In other words, none of these patents had been judicially determined as to their metes and bounds, if I may use such an expression.

Those, in a general way, were the general considerations that led me to believe and announce that this was a fair price and that it was all that ought to be charged.

Of course, in addition to that, obviously, was the fact that the terms of the sale imposed conditions which very seriously affected the money value of the patents and consequently very seriously affected the question of money consideration.

The value of a patent, as everybody knows, is based on the fact that it gives to the patentee a monopoly. We were selling these patents in such a way that that feature of it was to be destroyed. Nobody

was to get the exclusive right to manufacture or produce or sell under these patents. I made that a *sine qua non* at all times from the beginning to the end of the consideration of this question; and of course, it was fatal to the idea of a large money price.

Further than that, it was a part of the plan, for the purposes which I have outlined here on the stand and which I shall not repeat, and which we believed not only sufficient and proper, but highly important; it was a part of that arrangement that this institution which was to buy these patents should not make any money and we saw to it that the thing was secured in such a way that they would never make any money out of the patents; I mean, that the stockholders, the individuals who put up the money were restricted to six per cent. on their investment.

That, of course, had its effect, must have had its effect on the value of the patents to the purchaser. I had to consider not only the value of the patents generally and the value to the seller; but in view of the fact that I had, for the reasons that I have stated, created a purchaser for the purpose of making the purchase, I had to consider the value to the purchaser.

So that, considered from all these angles and from all these points of view, I believed then and I believe now that $250,000 was a fair, adequate price and consideration.

THE COURT: We will now take the usual recess.

(Recess until 1.00 o'clock P. M., Standard Time.)

AFTER RECESS.

MR. ANDERSON: May it please the Court, on yesterday counsel introduced in evidence a paper signed by Edward S. Rogers and stated that Mr. Rogers was a representative or employee of the

Federal Trade Commission. I was not informed on the question and reserved the question on that point. I have since made inquiry and it appears from the best information I can get, that Mr. Rogers was, at the time of that paper, officially connected with the Federal Trade Commission as counsel, perhaps, and that one or more of the licenses issued by the Federal Trade Commission and put in evidence in this case was attested by Mr. Rogers as acting counsel in charge.

I refer especially to the license dated January 17, 1918, Plaintiff's Exhibit No. 228. From those facts I assume that Mr. Rogers occupied that position and am willing to admit that fact unless it be shown to the contrary during this case, and I do not think it will. Without waiving my objection to the evidence, I admit that specific fact.

By Mr. Kresel:

Q. 282. Mr. Palmer, the order of February 26, 1919, executed by Mr. Polk, with reference to the sale of these patents to The Chemical Foundation, authorized the sale at private sale. I wish you would state the reasons which actuated you in recommending to Mr. Polk that these be sold at private sale instead of at public auction.

The Court: I understand this is subject to all the objections that you made to similar testimony this morning, Colonel Anderson.

Mr. Anderson: Yes, sir. General and specific objections.

The Court: It will be taken under the general rule.

A. The sale of the Bayer Company, carrying with it 1200 or more chemical patents to a single purchaser, taught me the danger of selling these chemical pat-

ents by an ordinary public auction to the highest bidder. Those patents had belonged to the Bayer Company of Germany, one of the six great concerns which during the war had been combined into a single trust. I feared that they covered, without knowing exactly what they did cover, a wide range of chemical processes and products.

We knew that they would ramify generally into the industry and I saw that if the rest of the patents, chemical patents, were sold in the same manner to a single purchaser, a monopoly would obviously be created in this country having the same effects as far as the Government and the people were concerned as the German monopolistic control of the industry in this country had had in the past. The purchasers of the Bayer Company having already put $5,000,000 into that property and being the owner of that many patents were in a much better position than anybody else to become a purchaser, and there would be great danger that they would be the purchaser and there would then come under a single hand, under a single control, all these patents, with the same powers pertaining to them as the Germans had held.

Therefore, I early concluded that whatever sale was made would have to be made subject to conditions which would protect us against repetition of what had happened and which would, as I have explained, ensure the opportunity of the Government to have the benefit of the developing chemical industry.

So I determined upon the conditions. Having done that, I readily saw that at public sale it would be impossible to get anybody to accept these patents subject to those conditions, conditions that would require them to give equal rights to all in the way of licenses, conditions that would require them to give to the Government a very valuable portion of what they

were proposing to buy, and conditions that would make it certain that no monopoly should be created.

When the conditions shaped themselves in our minds, conditions under which we desired to sell, I saw that it would be impossible to hold a public sale and hope to get any purchaser, and therefore created The Chemical Foundation for the purpose of becoming the purchaser, in order to make sure that those conditions would be carried out. In addition to all that, of course, there was at all times the very striking possibility that if we sold at public sale and were compelled to sell to the highest bidder the patents might ultimately go back directly or indirectly into the hands of the same people from whom we had taken them.

While I know the law provided that no such person could become a purchaser, there was no way by which we could guard against that happening. After the war was over, the chances were that it would slip back into the same old groove. We knew in that connection the purpose and intent of many Germans who had property in this country taken from them and sold at public sale to re-acquire them in some kind of fashion when the war should be over. We knew that was in their minds with this tremendously important war key industry. I could not have prevented that thing happening if I had had an open public auction selling to the highest bidder. Therefore, I determined upon a private sale to this purchaser which we had created for the purpose of becoming the purchaser, which is the only concern that I knew about that was willing to accept them on the conditions that we had imposed.

THE COURT: If I understand you, Mr. Kresel, the witness is merely giving the reasons which impelled him in his official capacity to recommend an Act as he did, in connection with this matter.

MR. KRESEL: That is it, your Honor.

THE COURT: You are not relying on such statements of the witness to establish any fact other than that fact, I take it.

MR. KRESEL: That is right, your Honor.

THE COURT: Now, then, are you going to make inquiry now as to how he knew what was in the minds of the Germans?

MR. KRESEL: I am going to ask him that now.

THE COURT: Very well.

Q. 283. You spoke of knowing that it was in the minds of the Germans to re-acquire, if they could, the property that you had seized. Will you state what information you had on that point?

A. The information I had was gained chiefly from the correspondence between the German owners of American properties and their agents and other people in this country, which had been going on by wireless——

MR. ANDERSON: You have not stated what time.

MR. KRESEL: He is coming to that.

A. (continuing) ——which had been going on by wireless just before we got into the war and after, in fact, we got into the war, but principally before, at a time when the Germans realized that we were going to get in. We had numberless cases in which instructions were given by the German owners to their friends in America or to their agents and representatives here that title to the property should be transferred to them until after the war.

Q. 284. Can you give some examples?

A. Yes, I can give some examples.

Q. 285. Will you, please?

A. I remember one interesting and well-known case was the case of the Hamburg-American Lines terminal at St. Thomas, in the Virgin Islands, where, acting under instructions from the Hamburg-American Line in Germany, the title to the property was con-

veyed to a man by the name of Jorgensen, who gave his note for the purchase price, amounting, I think, to $290,000, and at the same time executed an agreement with the representative of the Hamburg-American Line that the note should be renewed whenever it became due.

MR. ANDERSON: I will have to object to that. If it has any materiality whatever, I do not think the details of that transaction should be presented here without the written evidence.

THE COURT: I think I created the difficulty by my inquiry, so I will sustain the objection.

MR. KRESEL: I followed your Honor's suggestion.

MR. ANDERSON: I beg leave at this time to move to strike out the two preceding answers on the special ground that they contain matter which upon the face of the answers is not within the witness's knowledge and on the ground that they contain statements of what other people purported to do and thought and what was in their minds and upon the further ground that the matters to which he refers were obviously founded upon correspondence, if at all, prior to the war.

THE COURT: I wonder, Colonel Anderson, if I am laboring under a misapprehension. If I am, will you not help me? Is, from your standpoint, the information upon which the Alien Property Custodian acted at all relevant here? I understand you fully, I think, that the ultimate questions, as you stated briefly and tersely yesterday and the day before, are whether the Alien Property Custodian and Mr. Polk and the President had the power to do what they purported to do; that is, under the Act of Congress. That is the broad question. And then whether they actually did

what they purported to do, namely, the validity or effectiveness of the several Executive orders.

Then value comes in and the private sale comes in, because if these were sold for what would have been their full and complete value separate from any and all other conditions of sale, there would be left, as I understand it, but the single question of whether or not, as you put it, the buyer and seller were the same party.

Conspiracy is a thing which I have seen somewhere is difficult to prove, and when proved, is difficult to disestablish. Now, you contend that you have proved the alleged conspiracy, and as you stated yesterday, proved the allegations of the Bill except the forty-sixth paragraph, if my recollection serves me right, with respect to which you reserved the right to put in further evidence. Now, one of the constructions, at least, whether valid or not, would be that which I indicated yesterday and attempted to indicate this morning, and it seems to me for that reason possibly (understand, I am not determining this finally) that the information upon which those people acted, the Alien Property Custodian, Mr. Polk and the President of the United States, becomes of importance, but of course does not control the question or have any value in the determination of the question as to whether the statute gave them the power to make the sale at the price and under the terms and conditions under which it was made; but it seems to me that there is a probability of materiality. Do you think that is so?

Mr. Anderson: No, sir. Taking the theory of the case that your Honor has indicated, any proper and legal evidence of any actual facts upon which the action of the officers of the Government was predicated is, I take it, probably

material. The line of where it is and where it is not material is not easy to draw, and, therefore, of course, the latitude and discretion of your Honor must be followed; and unless that were clearly a mistake, it would not be reviewable.

The reasons which actuate a person, as distinguished from the facts upon which he acted, I take it, are never evidence after the fact, whether he be charged with fraud or mistake. The facts, the knowledge that he possessed may be material. But, assuming the facts to have been correctly represented, it then becomes a question of power and whether or not he followed the procedure required by law. What may have been his reasons, acting within his legal rights and in the manner prescribed by law, and with knowledge of the actual facts or a correct understanding of the actual facts, I have contended throughout and in accordance with your Honor's view, were not reviewable. But if this is considered on the ground of conspiracy or fraud, it matters not what may have been his reasons or his motives, they must be inferred from his acts and cannot be proved by direct testimony.

THE COURT: I do not think there is any difference in our views with respect to that, with one possible exception. I use the word "information" and not "reasons." I realize that the witness did incorporate in part of his answer this morning some reasons and I wondered at the time just where the line was there, whether he was not stating his reasons rather than information. But I decided to let that go in under the general rule. But it seems to me reasons become of some moment here, because I understand the statute to be that the reasons of the President must be stated in the order——

MR. ANDERSON: And only those.

THE COURT: Authorizing the private sale. Won't you help me with respect to that for a moment?

MR. ANDERSON: Yes, sir.

THE COURT: I have forgotten what you said with respect to those reasons and your attitude with respect to them—that is, what in your view the Court's attitude with respect to those reasons must be, whether they may be demurred to in effect as insufficient, whether the accuracy in fact of those reasons can be here challenged by you, or just exactly what your position was with respect to that matter.

MR. ANDERSON: I will try to make my position clear, with your Honor's permission. The act provides that the President, stating his reasons therefor, in the public interest must determine this. No other reasons other than those stated by the President can be considered, because the act has required that he state his reason. It is an unusual act—very unusual. In the other acts where he was required to determine certain things, as in taking over the railroads or the telegraph lines, power had merely been given him to determine in the public interest, and you could not get behind that because you did not know what was in his mind.

But here he must state his reasons therefor in the public interest. I think the authorities, such as the Chinese Exclusion Acts, requiring the exercise of discretion founded upon certain facts, allowed the review of the reasons; after giving all reasonable presumption in favor of the validity of the act of an executive officer the Court, if he has clearly misunderstood or was wrongfully advised to use the English idea, as to those facts,

will review them to the end that the law may prevail. To that extent your Honor can go into it.

THE COURT: That is, review them as to their correctness.

MR. ANDERSON: As to their sufficiency for the predication, and whether in that case those reasons were within the contemplation of the law.

THE COURT: From your standpoint can we go into the accuracy of the statement of the reasons?

MR. ANDERSON: No, sir; the accuracy of the statement of the reasons is conclusive, I should say, on all parties. He states, "These are my reasons"—1, 2, 3. Those are the only reasons to be considered.

To use an extreme illustration, suppose the President or the officer exercising this power should say that he finds it is a warm day, and something else, and that such and such conditions, which are entirely irrelevant, would justify this in the public interest. In my judgment the Court could review that, because that would be clearly not a sufficient predicate for his action.

THE COURT: In brief, you say the reasons may be demurred to?

MR. ANDERSON: The reasons—instead of being against the pleader, in favor of the pleader. Your Honor understands that position, of course.

THE COURT: I cannot go back of the fact.

MR. ANDERSON: You cannot go back of the wisdom of his action if the reasons are sufficient. I want to make it very clear, because I do not want to limit the scope of this proceedings at all, and in this hurried debate at the bar it might be so construed. You can look at his power, first to perform the act, second the method of performance of the act, that it followed the law; third, you can look into the facts upon which his act is predi-

cated, because mistake of fact is always a ground——

THE COURT: Then you can go behind the reasons stated?

MR. ANDERSON: The facts on which his reason is predicated—that is, the facts known to him at that time. Do I make myself clear? Let me use an illustration. For instance, suppose I come to this Court—and nothing is more familiar to us than the rule of the exercise of judicial discretion. Assuming jurisdiction, and assuming the Court to have known the facts, the exercise of judicial discretion may be reviewed only as to its correctness.

THE COURT: I understand.

MR. ANDERSON: In the same way exactly an officer of the Government, who is an agent of the people, the people speaking through the law have declared can only do a certain thing in a certain manner. You inquire into that. If it says he must exercise discretion. You can inquire into the fact whether he was misinformed as to the fact, because that is like a mistake of fact which this Court could set aside or correct by its decree, just as a fraud on the Court would set aside a decree. The Court would not be responsible, it would be somebody else would be responsible; the Court would never be presumed to be responsible for a thing of that kind.

The same with an Executive officer. When you come to the last stage of the proceeding you inquire into the actual fact upon which he acted. You inquire second, into whether the reasons which he states in the public interest are such as will sustain his action.

I am frank to say to your Honor that in inquiring into that every reasonable presumption will be in favor of the reasons which are assigned,

but if they would be clearly insufficient and without the scope of the act, and due to an error entirely of the meaning of the act, the Court would set them aside.

THE COURT: Of the same effect as if no Statute had been passed. That is, if the Statute did not give him the power to do it, it could no more allow the Trading with the Enemy Act to support the act.

MR. ANDERSON: And if he stated reasons which are obviously not sufficient to sustain his action.

THE COURT: I understand that.

MR. ANDERSON: But the inquiry into his reasons must be limited to the reasons which he gave in the order.

THE COURT: I understand that, but there is another point which you have probably stated with all clearness, and yet I have not got it.

MR. ANDERSON: Possibly I am not very clear today.

THE COURT: I have been wondering just where that leads to. As I understand you, there is no question but that the power can be inquired into, and you both agree to that.

MR. ANDERSON: Yes, sir, both as to the power to do the act and the method of doing it.

THE COURT: I do not know whether you differ or not as to whether judicial inquiry may be had into the reasons stated by the President.

MR. ANDERSON: I think we disagree as to that.

THE COURT: I assume you disagree as to that. I can understand you there. I do not know what my conclusions will be, but I understand you. I am not sure, however, that I understand your other contention, and I am not sure that I under-

stand exactly what it is, but if I do it is something of this nature—that you can not only inquire into the sufficiency of the stated reasons, assuming them to accurately represent the facts embodied in the reasons, but you may also go behind the stated reasons to inquire into the accuracy in fact.

MR. ANDERSON: Yes.

THE COURT: And also to determine whether there were other facts which were in existence, but absent from the mind of the President, which if they had been known to him, would in the judicial opinion have led to a different conclusion. Have I stated it clearly?

MR ANDERSON: Your Honor has stated, I would say—I do not like to use the expression—with reasonable accuracy what I am trying to express. It is very difficult, because the line of distinction there is extremely fine and I would really have to have the authorities before me for analysis, which I haven't got. But your Honor has stated in general the thought that is in my mind.

On the other hand, assuming those conditions to have been met, as to the wisdom of the action, the exercise of the discretion, of course we all agree. But in addition to that, what I am objecting to here is that the distinguished witness upon the stand cannot give his reasons for his action and cannot give his motives for his action, because if a man could give his reasons and motives when a question of this kind arose, you never could prove the contrary. You must assume that from the facts stated.

MR. KRESEL: I desire to be heard on that, your Honor.

MR. ANDERSON: I did not intend to go into an argument.

THE COURT: I will hear you, but it seemed to me this. I realize in one or two instances statements have been injected into the case which might be considered as pure reasoning apart from facts. But my difficulty with most of this testimony is as to whether the information which came to the knowledge of the Executive officer and the information that Executive officer must have—I assume they cannot have all facts judicially determined before they make a decision——

MR. ANDERSON: Certainly not.

THE COURT: It seemed to me that the information was proper evidence to be received under the general rule without an immediate determination of whether or not it is material.

MR. ANDERSON: Your Honor will allow me to say that when I am making these objections, of course, I am not making them captiously—I need not say that—but I recognize your Honor's position and when I state them over, it is not intended to re-argue but merely to keep the record straight that we may have these questions open for consideration when we come to argue.

THE COURT: You understand the unusual nature of this case makes me proceed at a great expense of time.

MR. ANDERSON: I quite understand.

THE COURT: I will hear you, Mr. Kresel.

MR. KRESEL: We contend, your Honor, that not only may this officer state the information that he had upon which he acted, as your Honor has very well pointed out that the Executive officers must act upon information and not wait for judicial construction or determination of the facts, but we also say that it is admissible upon the ground that there is a conspiracy charged here.

It is charged that these officers did not act upon their own volition; that they were imposed upon; that they were carrying out the purposes and desires and the conspiracy of others. Therefore I contend that this officer can give what reasons he had that actuated him to do what he did, so as to show that they were his own reasons; that he was acting upon reasons that appealed to him and not because somebody else tried to get him to do the thing. Have I made myself plain, your Honor?

THE COURT: Yes. You may take such evidence you believe to be relevant or material, and such evidence will be taken under our general rule, and I will pass upon any necessary question with respect to it eventually.

MR. ANDERSON: Under that statement I will avoid objecting unless I think that I should point out additional objections.

MR. KRESEL: I do not think there was any unanswered question, so I will proceed to the next question.

Q. 286. In the order signed by Mr. Polk, of the 26th of February, 1919, one of the reasons in the public interest assigned by Mr. Polk for making of the order reads as follows:

"Sixth: Unnecessary expense, delay and inconvenience may be avoided by a private sale." I wish you would state what the facts were with reference to the expense, delay and inconvenience that would have been entailed in a public sale as distinguished from a private sale.

A. We never made a public sale of any of the enemy properties under our published regulations without having the properties appraised by an independent appraisal company and without having a critical

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audit by certified public accountants of the books and accounts which were pertinent and which might be important for bidders to know about. Of course, to have made an appraisal of these patents would have required a large amount of time and a great expenditure of money. The sales which we made were made after advertisement in accordance with the statute, and we construed it to mean the distribution of a prospectus which we carefully prepared and in which we inserted all the data with respect to the property that was possibly obtainable from every source, and the advertisement for a long period in all of the prominent newspapers throughout the entire country. And this would have entailed delay and great expense about a property of this sort.

Q. 287. Did you have funds available for that purpose?

A. We had no funds available except such as we might get out of the purchase price. We would pay the expenses of the sale, including appraisal and auctioneer and advertising and that sort of thing out of the purchase price; but without any assurance that we could sell at public sale or get anybody to bid anything for it, we would have been stuck. The expenses that we would have incurred there would have been no way of paying whatever. We had no appropriation for it.

Q. 288. In cases of the sale of a going property that was in your charge, how did you pay the expenses there in the first instances?

A. Expenses of the sale?

Q. 288. (Continuing). Yes, advertising and so on.

A. We paid them out of the purchase price.

Q. 289. Did you in the first instance pay them out of the property? For example, take the Bayer sale. You had control of the property; it was a going concern; it had money in its treasury; did it not?

A. Yes.

Q. 290. In a case of that sort did you use the funds of the property itself to pay these expenses as they were incurred?

MR. ANDERSON: I will have to object to this examination as leading, sir.

THE COURT: The question is leading in form.

Q. 291. Mr. Palmer, did you have your general appropriation for the payment of expenses in the sale of property?

A. No, no appropriation at all.

MR. KRESEL: I think that is all.

MR. ANDERSON: You can stand aside, Mr. Palmer.

MR. KRESEL: No questions?

MR. ANDERSON: No.

THE WITNESS: Does that mean I am excused?

MR. KRESEL: Is the witness excused?

MR. ANDERSON: As far as I am concerned.

(Witness excused.)

MR. KRESEL: I will call Mr. Garvan.

THE COURT: Of course, the interests of Mr. Kresel's client have a greater weight than Mr. Polk's convenience.

MR. ANDERSON: Of course, and the interest of the Government I do not think will suffer.

FRANK L. POLK.

FRANK L. POLK, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Mr. Polk, will you please state on the record your full name and place of residence?

A. Frank L. Polk, New York City.

Q. 2. You were during 1918 and 1919 Under-Secretary of State of the United States, were you not?

A. Counsellor for Department of State up to July 1, 1919, and from that time on Under-Secretary of State. It was the same office, but at the time it was changed.

Q. 3. Yes, I know. And during the absence of the Secretary of State in Paris after December 3rd until the middle of the next year you were Acting Secretary of State?

A. Yes, sir.

MR. KRESEL: December 3, 1918?

MR. ANDERSON: Yes, December 3, 1918.

Q. 4. Mr. Polk, you are generally familiar with the questions involved in this case, are you not? I mean the controversy here.

A. In a general way.

Q. 4-a. It appears from the exhibits filed with the answer in this case that about December 3, 1918, the President on his departure for Paris signed an

Executive order by which he vested or undertook to vest in you all the power and authority given by the Trading with the Enemy Act to issue Executive orders under Section 12 of that act except as expressed in the order itself. You recall that circumstance?

A. Yes, sir.

Q. 5. It also appears that acting or purporting to act in pursuance of that authority you issued two orders signed by yourself—which I will show you if you wish, but undoubtedly you are familiar with them. —one dated February 26, 1919, and the other dated April 3, 1919, in relation to the sale by the Alien Property Custodian of certain former enemy-owned patents which had been seized by him, the sale to be to The Chemical Foundation, Incorporated, the defendant here. I should be very glad if you would state to the Court the facts in connection with the signing of that order and present any correspondence you may have dealing with that subject, and make the full statement, and in that connection, if you would do so—you have heard my statement at the Bar—would you make any statement on that subject which you desire to make?

A. I am very glad of the opportunity, Colonel. May I look at a copy of the order?

MR. KRESEL: Just a minute, please.

THE COURT: You may refresh your recollection in any way you desire.

MR. KRESEL: Just a minute before the witness answers the question. The defendant objects to the question upon the ground that it is immaterial, irrelevant and incompetent, on the ground that it is an effort by testimony about to be introduced to have the Court pass upon a matter which by act of Government was given into the discretion of the President acting through such officers as the President may appoint according to that act, and that such discretion was exercised by the

President acting through such officers as he appointed; that, therefore, the act of the President is one that the judiciary can not interfere with or review. In support of this objection, we desire your Honor to take into consideration and to consider as specifically urged the grounds urged by Mr. Guthrie in his argument before your Honor upon this very question of the non-justiciability of the question here presented.

MR. ANDERSON: Then, if your Honor please, the question is withdrawn. I am through with the witness.

MR. KRESEL: That is all, Mr. Polk.

THE COURT: You mean, Colonel Anderson, that I should take that as a waiver of your position?

MR. ANDERSON: No, sir. I insist upon my legal position, that if the question is objected to, I withdraw it.

MR. KRESEL: It seems to me, your Honor, we have come to a place now where we might as well understand the Government's position. The Government can not blow hot and cold here. Our position has been made perfectly clear from the outset, that we contend the Court has no jurisdiction to review the act which the Government has asked the Court to review.

The Government has come in here by its Complaint and has sought to have the Court review this act. They have called a witness here and have sought to elicit from him evidence in support of the allegations in their Bill. We take our objection, as we have a right to, in order to support the position that we have taken. The Government says to your Honor now, "Well, if that is the position of the defendant, we won't bring out this testimony."

It seems to me that all this question of frankness with the Court must be somewhat discounted if those are going to be the tactics of the Government. They either ask the Court to review these acts of the President or they don't.

THE COURT: Your position has been made clear from the beginning and that, as I understand you, is one of the crucial contentions that you shall urge and have urged.

MR. KRESEL: Certainly.

THE COURT: Now then, as to whether, however, in the absence of a specific objection when the question is clearly and definitely presented, the Government wants to take a position antagonistic to your position is for it to determine and not for him.

MR. KRESEL: Certainly.

MR. ANDERSON: I want to make my position clear, since counsel desires to raise a question as to the frankness of the Government. I have offerred this evidence and have stated my reasons for offering it. If it is not objected to, I am perfectly willing for it to go in. If it is objected to, I do not have to press the question.

THE COURT: You do not. But can you require the defendant to withdraw any objection if you have exercised your option of withdrawing the witness instead? But it seems to me, Colonel Anderson, that the witness having been called, the control of your case is in your hands. I am not criticizing your suggestion, but it seems to me possibly that in the ultimate determination of this case, I will be confronted with this fact. What my conclusion may be, I do not know and I do not intend to prophesy. It seems to me that I will be confronted with this condition.

The Government contends by its allegation in its Bill, and by its position in open Court up to this point, and made clear and very clear in your opening statement, Colonel Anderson, that it is within the power of the judiciary to determine, under the facts of this case, as to whether the orders made by Mr. Polk and by the President are subject to review by the Courts for the reasons stated in the Bill.

The answer of Mr. Kresel to that, and Mr. Guthrie, throughout has been, before we reached that point, that the Courts must stop, that they have no power to review executive acts, that the Courts have no power to review the executive discretion. Now then, we have met just now for the first time on that issue, more substantially now than heretofore. If you withdraw from that position when it is forcefully challenged, I do not undertake to say what the psychological effect may be as well as the legal effect.

Mr. Anderson: The question here is on an objection to particular evidence. I can present any evidence to support my position on that point, I submit with deference, that I may see fit. The evidence is documentary, as a matter of fact, on that subject and I was going to put in certain documentary evidence which under stipulation I am entitled to read in without identification on this subject.

I would like to have your Honor rule now, to raise the question whether my failure to insist upon the oral testimony of Mr. Polk can affect in any way my legal right to urge that the Court can look into those questions upon such evidence as I may present.

Mr. Kresel: That is a moot question, your Honor. I am in no position to argue that; and,

of course, your Honor is not going to rule upon such a moot question.

THE COURT: That is the difficulty.

MR. ANDERSON: The question I submit is presented by the insistence of my putting this witness on the stand.

THE COURT: No, I am not insisting that you put him on the stand. I was just wondering whether there was any legal ground which would prevent your arguing or presenting the question with the full force that you might in other conditions. But I have no conclusions about it. I will make some when it becomes necessary. But the point is not now presented, so you are entirely within your rights and I do not know that you will be damaged. I only wanted you to consider that now. It is not for me to consider, but for you to consider. I do not know that you are in any danger, Colonel Anderson.

MR. ANDERSON: I am very frank to say that I think I am well within my rights in presenting any other evidence as to any question raised here. If any question is raised here, I have said at the beginning and I say now that I want all the facts in this case to come out, but I do not feel obligated to bring facts out over objection.

THE COURT: Of course, you are not.

MR. ANDERSON: (Continuing) That are adverse to the Government or may be regarded as adverse to the Government. However, I am going to resolve every doubt in this case in favor of the Court having all the facts, and therefore I will recall Mr. Polk and ask him to answer the question in view of that fact.

FRANK L. POLK recalled.

THE COURT: Do you recall the question?

THE WITNESS: Yes, I recall the question.

MR. KRESEL: I understand your Honor overrules my objection.

THE COURT: Without finally determining that issue, which is one of the crucial ones of the case, as I understand it, I shall take this testimony and overrule the objection under your general and specific objections.

A. (to Question No. 5.)

THE WITNESS: In February, 1919, February 26th, a letter was sent me from the Alien Property Custodian's office, signed by Mr. A. Mitchell Palmer, then Alien Property Custodian, in regard to an order which he desired that I should sign. I have the original letter here. The letter was brought over by one of the legal force of the Alien Property Custodian's office. Who it was, I do not recall. With the letter came the proof sheets of the report that Mr. Palmer had prepared dealing with this subject, and he called my attention in the letter to certain pages—certain paragraphs—of the report. I read the letter, read the particular pages he called my attention to, and skimmed over very hurriedly the other part of the report, taking one or two high points.

Later in the day, Mr. Palmer either came over to see me, or we got in touch over the telephone, I am not quite clear which it was, and we discussed the matter at some length, the question of my signing this particular order permitting him to sell at a private sale certain patents. I remember that in our talk I asked the question whether this had been approved, this particular sale had been approved by his so-called Sales Committee, consisting of Mr. Bannard, Mr. Dodge, Mr. Griswold, Judge Ingraham, and one other. He said it had been. I signed the order. I forgot

to state he explained to me why it was necessary for me to sign the order. The President had just returned from abroad the day before or the day before that, and he was tremendously pressed with a great deal of executive work, and it was towards the end of the session of Congress. There was a deadlock. Legislative deadlock. He was having to see a great many Senators and Congressmen in order to get through the necessary appropriation bills, and the situation was such at the White House that it was very difficult to get him to give the time to consider this particular question, so that was the reason Mr. Palmer advanced for my signing the order, and I signed the order.

Q. 6. Would you let me see that letter?

A. Yes, sir, that is the original, Colonel.

Q. 6-a. This is the original letter from Mr. Palmer to you, transmitting the order?

A. Transmitting the order, yes, sir.

Mr. Anderson: If your Honor please, the plaintiff offers in evidence letter from Honorable A. Mitchell Palmer to Honorable Frank L. Polk, dated February 26, 1919, which has been identified by the witness, and asks that it be identified and read as Plaintiff's Exhibit No. 90.

Received in evidence and marked "Plaintiff's Exhibit No. 90." (*See Exhibits, Vol. I, page 279.*)

Mr. Kresel: We will substitute a copy.

Mr. Anderson: We will substitute a copy. I will hand it back to him with leave to substitute a copy.

The Court: Is there any objection?

Mr. Kresel: Yes, your Honor, we raise the same objection, and in order that I may not interrupt again during Mr. Polk's testimony with similar objection, may it be understood that our objection heretofore urged lies to the entire tes-

timony that is about to be given by Mr. Polk upon this subject.

THE COURT: I understand.

MR. KRESEL: And that we may have an exception to your Honor's ruling.

THE COURT: Yes, your exception applies to all like cases.

THE WITNESS: If your Honor will permit me, I would like to refer to Mr. Anderson's statement.

MR. ANDERSON: One minute. Let me get this letter—Plaintiff's Exhibit No. 90?

THE COURT: Plaintiff's Exhibit No. 90.

MR. ANDERSON: In order to return this letter to Mr. Polk, I will, with permission of counsel, sign and copy the signature on the bottom of a copy, and file the copy.

MR. KRESEL: Yes.

THE COURT: Have they been compared?

MR. KRESEL: I assume that it is a correct copy. I have not compared it, but I am quite sure that it is a correct copy.

MR. GALLOWAY: It is subject to correction anyhow under the stipulation.

MR. KRESEL: It is subject to correction anyhow.

MR. ANDERSON: In order to make it clear, that it is a copy, if your Honor will permit me, and the stenographer not take it down, I will read the letter and have the Clerk compare it right now.

THE COURT: Will you give it to Mr. Kresel?

MR. ANDERSON: Yes. (Handing to Mr. Kresel, and reading.)

Q. 7. Now, you can proceed with your statement, Mr. Polk?

A. Colonel Anderson referred to the visit he paid me last fall, when he had a talk in my partner's, Mr. John Davis' room, in regard to this case. He told

me he had been retained by the Government, and asked me what my recollection was. I told him that my recollection was very vague, that I signed a great many orders, I remembered this particular transaction in a vague way, but none of the details. Later on—as a matter of fact, I think it was after your office, or possibly Mr. Kresel, within the last two months, supplied me with a copy of the letter that has just been read. I was then able to refresh my recollection and I went through my papers and found the original letter and the report referred to in the letter was sent me. I then read the report, and in that way I was able to piece together a story, and my recollection was considerably refreshed.

Q. 8. You heard my statement at the Bar this morning, did you not, of our conversation?

A. I did.

Q. 9. That was substantially correct, was it not?

A. Substantially correct, Colonel, yes. I think I told you, as I recollect, that I had signed a great many of these, while I remembered this particular transaction for the moment, I could not remember the details of it.

Q. 10. All right. That is the same thing. Now, Mr. Polk, it appears—

MR. ANDERSON: At this time, if your Honor please, we will offer in evidence—it is already in evidence.

MR. KRESEL: In the answer.

MR. ANDERSON: That is in evidence. You have introduced it under the stipulation, the order signed by Mr. Polk, to which that letter refers will be found as Exhibit No. 3 with the answer in this case, and under the stipulation is introduced subject to the rule we are following as to objections.

THE COURT: It is now offered?

MR. ANDERSON: It has been introduced already.

MR. KRESEL: I do not recall.

MR. ANDERSON: The stipulation provides that the exhibits with respect to the Bill and Answer are introduced by the respective parties subject to any objection; if there is any question, I will introduce it.

MR. KRESEL: Colonel, we are following a different rule.

MR. ANDERSON: If there is any question we will introduce it.

THE COURT: I think we have been following a different rule.

MR. ANDERSON: I will then introduce the order of Frank L. Polk, dated February 26, 1919, which is in the record as Defendant's Exhibit No. 3 of the printed Bill.

THE COURT: Answer.

MR. KRESEL: Printed Answer.

MR. ANDERSON: With the printed Answer; and to avoid duplication, I will not present another copy, but refer to that, and have it marked as "Plaintiff's Exhibit No. 91."

THE COURT: So admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 91." (Same as Exhibit No. 3 to answer. *See Record, Vol. I, page 551.*)

MR. KRESEL: Do you want to introduce the second one?

MR. ANDERSON: No, I am going to that.

Q. 11. Now, Mr. Polk, it further appears that you signed another order, dated April 5, 1919. Would you state to the Court any recollection that you have about that, and if you have any correspondence relating to that, present it also?

A. That letter was signed by me while I was at White Sulphur Springs.

MR. KRESEL: You mean that Order, you said the letter.

THE WITNESS: That Order. Thank you. I was called up, as I recall, on the long distance telephone by someone from the Alien Property Custodian's office, saying that they had an Order that was necessary to be signed, and asked me when I would be back. I said I would be there two days more, and they said they would send the Order down. They sent the Order down from Washington to White Sulphur Springs, West Virginia, and I signed the Order there. A letter came with the Order, but I have not a copy of the letter. I have not the original letter. I have seen a copy, and the copy I have seen I recall as having received.

MR. ANDERSON: I am getting the copy now, sir.

Q. 12. I hand you a photstat of the letter, dated March 31, 1919, and addressed to Honorable Frank L. Polk, and unsigned. Will counsel admit that this letter was signed by Mr. Garvan (handing to Mr. Kresel)?

MR. KRESEL: I think that is the fact, Colonel. I have a copy here which appears to be signed by Mr. Garvan.

MR. ANDERSON: Just scratch that reference out, will you?

MR. GALLOWAY: Here is a certified copy, Colonel, if you want that. (Handing.)

MR. KRESEL: You do not need a certified copy. There is no question about that.

Q. 13. I hand you herewith a copy of a letter dated March 31, 1919, addressed to yourself and signed by Francis P. Garvan. Would you see if you can iden-

tify that as the letter to which you refer? (Handing to witness.)

A. I recall that letter, Colonel.

MR. ANDERSON: We now offer in evidence copy of a letter dated March 31, 1909, addressed to Honorable Frank L. Polk—

MR. KRESEL: 1919.

MR. ANDERSON: 1919. Signed by Francis P. Garvan; to be read and identified as Plaintiff's Exhibit No. 92.

THE COURT: Admitted under the same conditions as the preceding letter

Received in evidence and marked "Plaintiff's Exhibit No. 92." (*See Exhibits, Vol. I, page 280.*)

MR. ANDERSON: The letter is as follows: (Reading.)

In order to maintain the connection of the record, I would like to offer in evidence under the stipulation, a photostat copy of an original letter from Mr. Ramsay Hoguet to Mansfield Ferry, Esq., of the Alien Property Custodian's office, at Washington, dated New York, April 1, 1919, on the stationery of the Alien Property Custodian, which letter is as follows:

THE COURT: It may be admitted under like conditions.

Received in evidence and marked "Plaintiff's Exhibit No. 93." (*See Exhibits, Vol. I, page 281.*)

MR. ANDERSON: The letter is as follows: (Reading.)

Now, we offer in evidence—have you got that second Order?

MR. KRESEL: Yes (handing).

MR. ANDERSON: We offer in evidence the Order signed by Frank L. Polk, dated the 5th day of April, 1919, filed as Defendant's Exhibit No. 4 with the Answer in this cause, printed page

of Answer 114, to be identified and marked as Plaintiff's Exhibit No. 94.

THE COURT: It is admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 94." (Same as Exhibit No. 4 to answer. *See Record, Vol. I, page 554.*)

Q. 14. Mr. Polk, do you recall any further connection with this matter on your part, any other facts you want to state to the Court?

A. I think not. I think that is everything.

Q. 15. I will ask you if at the time these Orders were signed, and especially the first Order which related to that, you knew or had any knowledge of any negotiations between the War Department and the Alien Property Custodian, looking to the acquisition of the nitrogen fixation patents by the War Department?

A. Not that I can recall.

Q. 16. Did you know what patents, copyrights, trade-marks, or any of them, would be sold under the Order?

A. Well, yes. I knew that they were these German patents controlling the dye and the chemical industry.

Q. 17. And that they were patents that had not been used?

A. That had not been used.

Q. 18. You derived your information on that subject entirely from Mr. Palmer's report and his statements to you, to which you have referred, did you not?

A. Yes, sir.

Q. 19. Did you know at that time the number of patents, or other rights which had been licensed by the Federal Trade Commission, or whether any had been licensed by the Federal Trade Commission?

A. I knew that some had been licensed, but I did not know the number, or which ones.

Q. 20. And you did not know what patents they were, or anything about them?

A. No.

Q. 21. Did you take the matter up at all with the Federal Trade Commission before this Order was signed?

A. Not before the Order was signed, no.

Q. 22. I believe you stated that the source of your information on the subject as related to this Order and its purpose was derived from Mr. Palmer, as to the first Order, and from Mr. Garvan as to the second Order, in the manner you have stated?

A. Yes, in so far as this particular sale was concerned. Of course, I knew something of the dye and chemical patents.

Q. 23. Yes. But I mean the purpose of this Order, you only discussed the matter with Mr. Palmer in connection with his report, and the second Order you only discussed over the telephone with the gentleman in the Alien Property office?

A. In both instances, in addition to that, Colonel, the Orders were brought by some assistant in the Legal Department of the Alien Property Custodian's office, and in each instance I discussed it with the man, whoever it was, who brought the Order.

Q. 24. Could you identify in either instance the person who brought this Order?

A. I thought it was Mr. Ferry; and Mr. Ferry says not. I thought Mr. Ferry brought the second Order, but he said not.

Q. 25. Could you identify in any way the person that brought the first one?

A. No. I could not. I thought Mr. Ferry brought the first or second. He tells me he brought neither one. As I understand it, he says—so he tells me.

Q. 26. What you have said covers completely your knowledge and recollection of this entire transaction and the surrounding facts and circumstances; is that true?

A. Yes, sir.

Q. 27. At the time that you had signed this Order you had never seen the Charter of The Chemical Foundation, had you?

A. No, sir.

Q. 28. Neither of these orders?

A. No, I had not seen that

MR. ANDERSON: I think that is all.

CROSS-EXAMINATION

By MR. KRESEL:

XQ. 29. I do not suppose, Mr. Polk, that you have with you now or can locate the proof of Mr. Palmer's report that came with his letter of February 26th, that was put in evidence this morning, have you?

A. I made a search for it, but could not find it, Mr. Kresel.

XQ. 30. You could not find it?

A. No, sir.

XQ. 31. But it was the proof of what we have been calling here, "The Chemical Section" of Mr. Palmer's report to the President.

A. Yes.

XQ. 32. Now, I will show you Mr. Palmer's report to the President which was transmitted to the President, acording to Plaintiff's Exhibit No. 13—which was transmitted with a letter dated February 22, 1919?

A. February 26th?

XQ. 33. 22nd. The letter of transmittal is dated then. When it was actually transmitted is not yet in evidence; and I will direct your attention to that part of the report which commences with the word "The amendment of November 4th," and will ask you to take a few minutes to glance over that, and to the end of the report, and state whether that is not the portion of the report that Mr. Palmer marked with an "X" as he called it to your attention in this letter?

MR. KRESEL: May I see that letter, please? The one of February 26th, from Mr. Palmer to Mr. Polk. (Handed to Mr. Kresel.)

THE WITNESS: What is the question, Mr. Kresel?

XQ. 34. My question is whether that is the portion of the report that was sent to you in proof form that was especially marked with an "X" to call it especially to your attention, as appears from Mr. Palmer's letter to you?

A. Yes, as I recall it, that is the same thing.

XQ. 35. Now, just hold that there, please, because I shall probably want to ask you some questions about it.

THE COURT: What is the paper that you now hand him?

MR. KRESEL: That is the report and it contains—

THE COURT: Which is in evidence as Exhibit Number what?

MR. KRESEL: The letter of transmittal is in evidence as Plaintiff's Exhibit No. 13, and the portion of the report which is known as the Chemical Section—I do not recall what number that is.

MR. MAHAFFY: Plaintiff's Exhibit No. 12 admitted.

THE COURT: And the portion you there refer to is what?

MR. KRESEL: Is a part of Plaintiff's Exhibit No. 12.

THE COURT: And how can I determine what portion that is?

MR. KRESEL: May the record show then that it is that portion of the report which commences with the words "The amendment of November 4th to the Trading with the Enemy Act presented for the first time an opportunity for what appears

to me to be"—and so on, to the end of the Chemical Section of that report.

XQ. 36. Now, although you can not recall the name of the person who brought Mr. Palmer's letter to you together with the proposed Order that you subsequently signed, and the proof of the report, I understand you to state that it was some one from the Law Department of the Alien Property Custodian's office?

A. That is my recollection.

XQ. 37. And that at least it was a person who knew about this transaction and with whom you then discussed it?

A. Yes.

XQ. 38. I assume that you asked him questions to elicit any information that you wanted, and that he answered them?

A. Yes, my recollection is that most of my conversation—I had some conversation with him—but the conversation on this particular Order was with Mr. Palmer himself.

XQ. 39. Exactly. So that after this proposed Order was brought to you with Mr. Palmer's letter and the proof of the report, you had a conversation with Mr. Palmer, either in your office when he called on you, or over the telephone.

A. Yes.

XQ. 40. You cannot recall which; but whether it was a personal interview or over the telephone, was it on the same day, that is, the 26th of February, 1919?

A. The same day.

XQ. 41. And it is certain that it was before you signed the Order?

A. Yes.

XQ. 42. Of February 26th?

A. Yes.

XQ. 43. From your talk with Mr. Palmer, from your talk with the gentleman that brought the proposed

order to you, and from a reading of the proof of the report which Mr. Palmer sent you, you gained certain information?

A. Yes.

XQ. 44. Before you signed this Order?

A. Yes.

XQ. 45. Did you know at that time and before you signed the Order that it was proposed to sell these patents to the chemical industry?

A. To the Chemical Foundation.

XQ. 46. Incorporated?

A. Chemical Foundation, Incorporated, yes.

XQ. 47. Beside the fact that the name of the concern was The Chemical Foundation, did you know that the purpose was to make this sale in order to make the patents available to the chemical industry of the country?

A. It was so stated.

XQ. 48. Did you know that is was purposed that The Chemical Foundation, Incorporated, was to hold these patents, as is set forth in that report, as trustee for the chemical industry of the country?

A. Yes, as stated in the report.

XQ. 49. Did you know that the voting stock of the corporation, The Chemical Foundation, which was the common stock, was to be placed in a voting trust?

A. Yes.

XQ. 50. Did you know who the voting trustees were to be?

A. Yes.

XQ. 51. Did you know that they were to be the same gentlemen who were the Advisory Sales Committee of the Alien Property Custodian.

A. Yes.

XQ. 52. Did you know any of those gentlemen personally?

A. I knew three.

XQ. 53. Who were they?

A. I knew Judge Ingraham, Mr. Bannard and Mr Dodge; and I have met Mr. Stone.

XQ. 54. Did you have any confidence in their integrity and honesty of purpose?

MR. ANDERSON: If your Honor please, the character of these gentlemen is not in question here and I do not think the question of whether this witness had confidence in them is material. He knew these gentlemen and nobody is questioning that they are men of character. I do not think that that is the question involved here at all.

MR. KRESEL: We contend that we have a perfect right to show what was in the mind of Mr. Polk when he signed this Order, no matter where he got his information. We have a right to show what it was that moved him to take this action which is now being discussed.

THE COURT: If this testimony is admissible at all.

MR. KRESEL: If it is admissible at all. Of course, it is entirely subject to the objection we have taken.

THE COURT: The objection will be overruled in keeping with our general rule of practice adopted for this case.

XQ. 55. I say, when you were considering this matter, knowing these three men as you say you did, did you have confidence in their integrity and honesty of purpose?

A. I was very much influenced by that—the three men that I did know, their recommendation and the position that they would hold.

XQ. 56. Did you know at that time and before you signed this Order that it was intended that the cor-

poration that was to buy these patents was to issue only non-exclusive licenses?

A. It was so stated.

XQ. 57. And you believed it?

A. Yes.

XQ. 58. Did you know that such non-exclusive licenses were to be issued to any American upon equal terms?

A. Yes. Wait. Let me hear that question again.

XQ. 59. Upon equal terms, I said, and reasonable terms?

A. As stated in the report.

XQ. 60. And was it not also stated to you by Mr. Palmer, when he discussed it with you?

A. I cannot recall that we discussed that particular feature.

XQ. 61. Did you know that the corporation was to grant to the United States, free of charge, a license covering all these patents?

A. Yes.

XQ. 62. That was not only stated in the report that you had before you, but did not Mr. Palmer tell you that?

A. Yes, I recall that, because it affected the Army and Navy. At least I had been told that it would.

XQ. 63. And you know, do you not, that such a license has been given to the Government?

A. I have been told that. I do not know it.

XQ. 64. You knew what the capitalization of this proposed corporation was to be, did you not?

A. Yes.

XQ. 65. You knew that the stock, both preferred and common, was limited to a dividend of six per cent?

A. Yes.

XQ. 66. You knew that it was the purpose of this proposed corporation to use any surplus profits over and above the six per cent. dividend for the advance-

ment of the chemical industry and science in this country

A. It was so stated in the report.

XQ. 67. You knew that Mr. Garvan was to be the first President of the corporation, did you not?

A. I was told that and it was in the report.

XQ. 68. And you knew that there were about 4500 patents that were to be conveyed, did you not?

A. The report stated the number. I had no knowledge other than that.

XQ. 69. And that they were patents that covered the dye industry and chemicals in general?

A. Yes.

XQ. 70. And you knew that all this was being done in order, as it is stated in the report, that this industry might be Americanized, did you not?

A. Yes.

XQ. 71. You knew that the price, I mean the cash price, was to be $250,000, did you not?

A. Yes.

XQ. 72. I want you to turn, if you will, Mr. Polk, to this Order of the 26th of February, 1919.

A. I think I have a copy in my pocket.

XQ. 73. I am looking now at page 112 of the Answer. I direct your attention to the paragraph in your order which is marked "Second." the second reason that you assign for making this Order, which, with his Honor's indulgence, I shall read:

"The Chemical Foundation, Inc., has been incorporated for the purpose of holding letters patent, trade-marks and similar rights relating to the chemical and allied sciences as a trustee for American industry, for the purpose of the Americanization of such industries as may be affected thereby, of eliminating alien interests hostile to said American industries and of the advancement of chemical and allied industry in the United States." Now the next sentence: "The

Chemical Foundation, Inc., is obligated to grant non-exclusive licenses upon equal terms at a uniform royalty to qualified American manufacturers." I would like to stop there a minute. That statement in your order was based not only upon what you found to that effect in the proof of the report that you had before you, before you signed this order, but also upon what Mr. Palmer told you in your interview with him, wasn't it—namely, that the corporation was obligated to issue non-exclusive licenses upon equal terms at a uniform royalty to qualified American manufacturers?

A. Yes, he told me that in substance.

XQ. 74. You say that you had not at that time read the charter of The Chemical Foundation?

A. I had not.

XQ. 75. Was it your understanding when you signed this order that you were signing it upon the agreement contained in that report and the statement made to you by Mr. Palmer?

MR. ANDERSON: I do not think he can testify to his understanding.

MR. KRESEL: Certainly he can.

MR. ANDERSON: He has stated the fact and the Court will draw the conclusion.

MR. KRESEL: I am asking him purposely; because your Honor will recall that Colonel Anderson in his opening statement challenged this portion of Mr. Polk's order and said that it was founded upon a misstatement of fact, and his argument was that because the certificate of incorporation, according to his reading of it, does not bear out this statement, therefore it was founded upon a misstatement of fact.

THE COURT: May I have the question, please?

(The stenographer then repeated Question No. 75 above recorded.)

THE COURT: The agreement made in the re-

port, Mr. Kresel? I am sure I do not understand the meaning of it.

MR. KRESEL: I withdraw that. I do not think that does express the thought I had in mind.

Q. 76. Was it your understanding, Mr. Polk, when you signed this order, that an agreement was being made between the Alien Property Custodian and The Chemical Foundation, Incorporated, whereby the corporation was obligated to issue non-exclusive licenses to all American citizens on equal terms, as stated in your order here?

THE COURT: The same objection or not to that, Mr. Anderson?

MR. ANDERSON: I note the same objection.

THE COURT: Same ruling.

MR. KRESEL: You may answer, Mr. Polk.

A. My understanding was that The Chemical Foundation was bound to grant licenses on equal terms to all American manufacturers.

XQ. 77. Whatever its charter may say to the contrary?

A. Well, I did not—

MR. ANDERSON: If your Honor please, I do not think that is fair. We are not arguing this case.

THE COURT: I think the question is argumentative, Mr. Kresel.

MR. KRESEL: I withdraw it.

XQ. 78. And you also understood, did you not, Mr. Polk, when you signed this order, that The Chemical Foundation, Incorporated, was obligated to give to the United States Government a free license covering these patents?

A. I did not know as they were obligated. I understood that they were to be obligated; put it that way. I did not know that the actual contract had been made.

XQ. 79. Did you, in your discussion with Mr..

Palmer, take up with him or he with you the question of this cash consideration that was being paid and how it was arrived at, and what were the reasons that led to the fixing of that amount?

MR. ANDERSON: If your Honor please, I did not understand the witness to testify to that on the direct. He will have to make him his own witness on that point.

MR. KRESEL: No, I do not concede that I am making him my own witness on anything here.

MR. ANDERSON: All right, I just give the notice on the record. I do not ask the Court to rule.

THE COURT: I think that is in cross-examination, Colonel Anderson. I think your questions were broad enough to open the door to any knowledge or lack of knowledge that Mr. Polk might have had at the time of the sale. I overrule the objection.

A. Let me have the question again, please.

XQ. 80. Would you like to have the question read?

A. Yes, please.

XQ. 81. (Question No. 79 read as recorded above.)

A. We discussed the amount that would be paid, but I do not know that we went at length into the reasons.

XQ. 82. Do you recall Mr. Palmer stating to you several reasons that affected the value of these patents? I will take them up with you in a minute, but I want you to answer if you can the general question first.

A. I recall he laid stress on the fact that the patents had not been used in this country and that in many instances they did not know what they were.

XQ. 83. Or how to use them?

MR. ANDERSON: Now let the witness testify, please.

MR. KRESEL: I thought he had finished. I thought he had finished.

XQ. 84. Had you finished?

A. I had finished. Well, I was—

XQ. 85. Do you not remember, Mr. Polk, that Mr. Palmer pointed out to you that the American chemical industry did not get if they would buy these patents—did not get with the patents what is known in the chemist's parlance as the know-how?

A. No, I do not recall discussing that.

XQ. 86. Namely, the information which would enable any purchaser of the patent to work the patent and get the results; don't you recall his discussing that with you?

A. As I said when I answered the question before, they did not know even what the patents were. Beyond that I do not think we went.

XQ. 87. You recall that you say in your order here as the first reason for the making of it, as follows: "First: Said letters patent, trade-marks and similar rights can not be sold to the best advantage at public sale after public or other advertisement." Colonel Anderson's comment upon that part of your report in his opening statement was that was mere opinion on your part. Now I want to know what information you had before you, from talk with Mr. Palmer, upon which you based the opinion expressed in that paragraph. Do you recall?

A. I do not recall very clearly.

XQ. 88. What is your best recollection?

A. My best recollection was that as to the great body of patents it would be very difficult to sell them in a lump, that if they were sold to individuals the individuals would take the patents to the exclusion of the American market, they might fall into the hands of people that would not use them, that they might be bought up by people who would hold them, not manu-

facture under them, and we would be in the same situation as far as the German patents were concerned as we were before the war.

XQ. 89. Do you remember Mr. Palmer stating to you that the very purpose at the basis of this whole transaction was to break up the German monopoly?

A. Oh, that was clearly the intention.

XQ. 90. And that if he offered these patents at public sale somebody might buy them who would be substituted as the monopoly in the place of the German monopoly?

A. As I expressed the thought, that someone might buy them and not use them.

XQ. 91. Don't you remember that he pointed out to you that under the statute if he sold them at public auction he had to sell them to the highest bidder, no matter who he was, as long as he was an American citizen?

A. I knew that. I do not know whether we discussed it.

XQ. 92. And that such purchaser could take those patents, never work them—

MR. ANDERSON: If your Honor please, I think this is arguing this case with the witness. The witness said that his whole knowledge on this subject was derived from this report which came here and a telephone conversation with Mr. Palmer. Now we have an argument, a discussion by counsel with the witness, and I think it is doubtful whether counsel, with a witness who is reviewing his own trasactions, which position is necessarily adverse to the Government, really has a right to cross-examine him. He must be confined to the rules of direct examination. Here the counsel is testifying in this case and arguing the case with the witness. I think there is a limit, if I may suggest, if your Honor please, to things of that

kind. We are not getting at anything; we are getting argument.

THE COURT: No, I think we are getting two things, Colonel Anderson. You stated first that your allegations of the bill with respect to misinformation or withheld information from Mr. Polk, when he signed his orders, stood. So long as that stands and so long as you open the door, I assume that Mr. Kresel has the power and the right and the privilege of going into that in detail, although you stopped with broad generalities. But is seems to me the direct examination and cross-examination is demonstrating most clearly and forcefully the iniquity of a Court of Justice going into matters affecting and appealing to the discretion of the Executive or his designated agent. I had a clearly open mind on that question when the cross-examination began. I am feeling most strongly that I have erred and seriously erred in opening the door to this question.

Inasmuch, however, as I have opened the door, I am reserving that for consideration after final argument. I shall keep the door open, but it seems to me there could not be a better demonstration of the iniquity of that procedure than that which has taken place here this morning; because if we go beyond the question of power, then we get into the question of international relations and the reasons moving the Executive in designating representatives in such matters, matters with which this Court and so far as I know no other Court has any concern. If it is a question of power, then the Courts have a right to say whether the statutes should be so construed or is open to the construction to give to the President or his designated representative the power to do that which they did do, but as to the things which moved

them apart from the reasons stated in the order, I have grave and serious doubts, and I am almost convinced at this stage of the case that the Courts have no power to go behind the reasons stated in the order. I shall, however, inasmuch as the door has been opened, unless objection be raised by the witness himself for reasons of state, allow this testimony.

THE WITNESS: Your Honor, if I may say so, I am not the one to pass on the question of public policy now. It is very difficult for me to fairly state always the motives that moved me in signing Executive orders. I want to do entire justice to both sides of this case, but it is very difficult for me to state frankly and freely all that then was in my mind.

MR. KRESEL: Your Honor, it is just because of the situation that has been developed by reason of the Government's contentions here that we are trying to search the witness' mind. Of course, I shall not insist that Mr. Polk state anything here that he considers the public interests require should not be stated. I should be the last one to insist on that; and if I did, your Honor would not compel the witness to answer. I know that. But in so far as it is compatible with the public interests that the information should be given, I think we are entitled to have upon the record of the Court here, since the Court is inquiring about it, what the motives were that induced Mr. Polk, acting in the high capacity that he did, to take the action that he did.

THE COURT: Then there is another phase of it which is unusual and which does not occur in many instances, and that is that the United States and not a private litigant is opening the door and asking that the door be opened with respect to

the reasons. In view of the witness's statement, and in view of the fact that it is now several years past, and he has in several instances given you generally the reasons and his recollection of the reasons that moved him to this action, I am wondering whether you have not gone as completely into detail with respect to the reasons moving him to the execution or signing of this Order as may properly be done, as may effectively be done; because the witness has just stated, and he has stated several times, that he had before him certain things, Mr. Palmer's statement and Mr. Palmer's report and Mr. Palmer's letter; that is all.

Now then, there are certain facts which he says he knew himself and necessarily did know. Do not those documents, together with the general statement, weigh as much in favor of or against you as any further detailed testimony that the witness, necessarily having to draw on his reasoning, and necessarily having to draw on vague recollection, as he stated, that he might give.

Mr. Kresel: I shall follow your Honor's suggestion. I shall desist from further inquiry as to particulars, but I do want to ask the witness two or three other questions as to what other general sources of information he had.

The Court: May I hear Colonel Anderson before you put that question?

Mr. Anderson: I wish to state, if your Honor pleases, that there was not a suggestion in my examination, nor is there a suggestion in these Pleadings, of an attack upon the motives of any officer of the Government in signing these Orders; and the reference to motive is purely outside of either the Pleadings of the Government or any statement I have made or any statement I elicited from the witness.

THE COURT: I used the word thoughtlessly, Colonel Anderson, because you have disclaimed throughout any attack upon the motives. But what I meant by that was that you have alleged, as I understand you, and as I recall, that Mr. Polk in signing this Order did so without having had first disclosed to him the complete facts and circumstances with regard to the transaction.

MR. ANDERSON: Yes.

THE COURT: If I used the word "motives," I did it inadvertently.

MR. ANDERSON: As to any examination, either direct or cross-examination, that went to the fact of what was disclosed to Mr. Polk, he stated in concluding his direct examination that all that was disclosed to him was the talk with Mr. Palmer on the telephone, the report to Mr. Palmer, a portion of which he read, and the letter to Mr. Palmer. Those facts that were disclosed to him I concede are the proper subject of inquiry. Matters outside of those disclosures, which do not involve international relations—and it is merely a matter of what was disclosed to him and does not involve any other thing—are subjects of inquiry, as I have pointed out in my argument and will not repeat, as affecting whether or not he acted upon a full knowledge of facts or mistake of facts. That applies to any executive officer in exercising political discretion, which is an entirely different situation.

I want to make very clear here that if the Court has understood that the Government opened by its Pleadings, by its statements, or by its examination, the question or inquiry into political discretion or international relations, or those delicate questions which pertain to the general execu-

tive duties, it was not so intended and it will not be done in this case.

THE COURT: While I understand your statement with respect to that, Colonel Anderson, and while you understand just exactly where that line may be drawn in the trial of this case, because you have undoubtedly given days and weeks of study to the questions that have been raised in this case, I am not sure that I yet see where, in practice, that line is to be drawn. Will you help me on that now?

MR. ANDERSON: I will now; yes, sir. I think the line is to be drawn here. Your Honor can inquire into the facts that were presented to the witness at the time that he signed this Order. Your Honor can inquire into the facts upon which that Order was predicated. I confined my investigation to the facts recited in the Order and to whether he got a letter from Mr. Palmer and whether he examined Mr. Palmer's report, which for the first time today I knew.

On that question, as to the facts presented in the administration of an act for the sale of property held by the United States, in my judgment, it would be a subject for proper examination, even in dealing with the President himself, exercising that delicate care not to go beyond that into other questions which might be of the President's own knowledge.

I do not speak of Mr. Polk's general information on this subject. I have not a doubt that he knew a great deal about the relations between the Germans and the Americans prior to our entering into the war. I claim that to be entirely immaterial.

But he stated that his action in signing this specific Order authorizing a specific sale was predi-

cated upon this letter, the pages of the report of Mr. Palmer, which he was asked to read and did read hurriedly, and skimming as I recall it the remainder of the report, and upon a telephone conversation with Mr. Palmer, the hour and day not identified, but which I will ask him about—as to those matters put up to him we can inquire. But if we undertake to broaden that inquiry into the general international relationships, then I think we would be going into the political powers of the President and not into the specific power delegated to him by this Act of Congress.

THE COURT: I think I understand you, but the difference between you and the defendant with respect to that is, as I understand it, that the Executive Department is a separate and distinct and co-ordinate department of Government with no supervisory power in the judiciary, and, if I understand your position, Mr. Kresel, it is that there is as much lack of power in the judicial department to inquire as to the reasons or the soundness of reasons or the correctness of the statement of fact embodied in those reasons, in the Order of Mr. Polk, as there would be with respect to a certain treaty, for instance. That, as I understand it, is the defendant's position, and that in practice it would be difficult to draw the line.

MR. KRESEL: If your Honor will permit me to state my reasons.

THE COURT: I shall be very glad to have you state them instead of me.

MR. KRESEL: If the Colonel is quite through with his statement.

MR. ANDERSON: No I am not quite through, because I would like to answer the Court's suggestion.

If I may be permitted to suggest, one of the

important functions of the Court is to draw the delicate lines. It is not easy to draw general lines where one starts and the other stops. Therefore, I recognize that the Court approaches with great hesitancy, as every right-thinking man does, as a member of the Bar does, the consideration of these delicate powers of Government. So that, in arguing this question, if even in the earnestness of my position as counsel I should overstate that situation, I do not want the Court to understand that I am in any way wanting in appreciation of the delicacy of the questions presented, and I certainly would not present them if I did not think it was absolutely necessary to the position taken by the Government and its duties.

THE COURT: I have no doubt of that, Colonel Anderson.

MR. ANDERSON: Therefore, with that understanding, I want to say that the delicate line to be drawn there is this: If in the exercise of administrative as distinguished from executive powers or constitutional powers of the President—assuming that Mr. Polk was here authorized to act for the moment, which is a legal question—if in the exercise of those administrative functions which are conferred by Congress and Congress alone—since, as I already called your Honor's attention to the fact this is a Congressional power, that is, the control of alien property, and not an executive power; the President has nothing to do with that, primarily, I may say deferentially; the President's office is not concerned with alien property until Congress acts, and then only to the extent that Congress says—now, then, when the President has appointed an agent Alien Property Custodian or any one else, with limited powers, when in the exercise of those powers as prescribed

by the Act, if it appears that he acted contrary to the intent of the Act with the best of purpose, being badly advised, or mistaken; or if it appears that he acted upon a mistake of material fact, then the Court, in order to determine the validity of the Act, which is a judicial function often calling for the exercise of the most delicate discretion and taste, must inquire into it. As an illustration, I called your Honor's attention the other day to the great case of Lee against the United States, probably one of the most delicate ever passed upon by the Courts of this country, in which the Courts were called on to pass upon similar questions involving the acts of President Lincoln.

Therefore, while yielding to no one in my deference and respect for the Presidential office, and in my appreciation of the absolute importance of maintaining every possible safeguard around Executive discretion, I conceive that it is not only the power, but the duty of the Government, and the Courts, in adjudicating the rights of the Government, to consider these questions, when properly presented, with proper regard to the proprieties of the situation, what Mr. Justice Holmes once called "equitable propriety." When so presented, the Court should receive and consider the facts upon which the administrative discretion of a limited agency, even by the high office of the President himself, should be controlled, or upon which that discretion was exercised.

That is our view, I recognize, as your Honor has said, that this matter should be handled with the greatest possible delicacy, and I have tried to so handle it.

THE COURT: I have no fault to find with the position that you take. Whether it is sound as to this particular transaction is for me to deter-

mine primarily. But I am wondering this, Colonel Anderson: If your position be sound, the position taken in your last statement, whether Mr. Kresel has overstepped or even approached the limit of cross-examination that he would be entitled to in searching the knowledge of a Congressional representative through the Order of the President, and whether he would not be entitled to examine him as to each statement and each sentence embodied in Mr. Palmer's order—"Did you know this?" and the witness would probably answer, "It was so stated in the order." He could stop there or he could say he had further knowledge of that fact. I will get you to help me on that, if you will. Assuming for a moment that this is cross-examination proper and not examination in chief, I do not see just where the line stops.

Mr. Anderson: If your Honor please, my objection, if your Honor will recall, was that the counsel was arguing with the witness as to the interpretation of the orders and papers which were presented to him. I did not object, although I think it would be valid to object. Under the circumstances stated to the Court, this witness is really not subject to cross-examination, but each party must examine him under the rules controlling on the direct. But I did not object to that, because I did not mind it.

However, I think that he has gone as far as he ought to go in view of the peculiar circumstances under which this witness is put on the stand.

The Court: But I am wondering whether you are aiding me in the general consideration of the case. You recall that Mr. Kresel said he would not go further on that line, but he had some general questions he wanted to ask.

MR. ANDERSON: All right. I am perfectly willing.

MR. KRESEL: Does your Honor desire to hear me further as to our position on the general and underlying basic question of law, or shall we go on?

THE COURT: I think not, Mr. Kresel, because you stated it most admirably and so did Mr. Guthrie; and you have called attention to it two or three times in the progress of the case.

MR. KRESEL: May I make this one observation, however, that it is our contention, that if your Honor is to determine whether the discretion given to the President by Congress was properly exercised, we are entitled to show all the grounds that moved the President and his representative in coming to the conclusion, not only such information as Mr Polk had that was conveyed to him by Mr. Palmer, or that was contained in that report, or that was contained in Mr. Palmer's letters, but all information that Mr. Polk had bearing upon the question which induced the action taken by him. And may I recall to your Honor and to Colonel Anderson the fact that upon his direct examination Mr. Polk was careful to say that he had other information in his other official capacity. I have sent for the stenographic record of his direct testimony, because I want to read that to your Honor.

MR. ANDERSON: I am perfectly willing to concede it; that Mr. Polk did say that he had other information.

MR. KRESEL: Then does not your Honor see that upon the very direct examination of this witness he states substantially that his action was induced not only by what he learned from Mr. Palmer, the report and the letter, but by other information that he had in his official capacity?

As I said to your Honor, I shall not insist upon Mr. Polk's stating here anything which in his judgment ought not to be stated because of reasons of State. But I do want to ask him, as I say, with your Honor's permission, the various official capacities in which he acted and the sources of information that were available to him upon this very subject.

THE COURT: You may proceed along those lines.

By MR. KRESEL:

XQ. 93. Before I come to that, Mr. Polk, after you signed this Order of the 26th of February, 1919, did you have any talk with the President of the United States about it?

A. No extended talk. My recollection is that I told him as a matter of news that I had signed the Order. But we did not discuss it at all. That was some time between that date and the date he sailed. He sailed, I think, the 5th of March to go back to France.

XQ. 94. So that between the 26th of February and the 6th of March, 1919, you did state to the President of the United States that you had signed this particular Order of February 26, 1919?

A. I think I told him we had signed two orders, as I recall it. I merely stated it to him as a piece of information, that I had assumed to act, although he was there, in the country.

XQ. 95. And was that the reason that moved you to mention the matter to the President?

A. Of course.

XQ. 96. Namely, that you signed this Order although the President was in this country?

A. Although he was in this country.

XQ. 97. As counsellor of the State Department, which was your official position during this time, were

you in close touch with the Secret Service and Intelligence Department of the Government?

A. Yes.

XQ. 98. Will you please tell the Court, if it is a fact, how the Intelligence Department of the Governmental Departments centered in the State Department of which you were counsellor?

MR. ANDERSON: Your Honor, please, I object to that.

MR. KRESEL: Pardon me. Let me finish the question.

XQ. 98. (Continuing) I do not mean to ask you to give any information, you understand. I simply would like to have the Court understand the arrangement—how it was that the Intelligence Department, if it did, centered in the State Department?

MR. ANDERSON: If your Honor please, I must object, not only because it is utterly immaterial here how it centered in the State Department—the witness has said he was in touch with it—but I do not think it is at all proper to go into the question of the relations of the Secret Service and Intelligence Department with the various departments of the Government. It is not called for by this examination. It cannot have any relation to this matter, what the witness may have known, if pertinent. I am not objecting to it at this time, but I do object to going into that question of the relations of the Secret Service and Intelligence Department of the Government with the State Department.

MR. KRESEL: Your Honor will understand that I am not asking him to tell me a single word as to what he learned.

MR. ANDERSON: Even the connection is important.

THE COURT: It seems to me, Colonel Anderson,

I am going to sustain your objection, but will you help me on this? Going back to your previous statements, I am wondering whether, in the delegation of power by Congress or the conference of power by Congress upon the President, there is not a different condition existing than if it conferred that power on an individual, for instance, the Alien Property Custodian, and whether we should not be more restricted in our inquiring into the exercise of discretion or the reasons moving the exercise of discretion, when that power has been given by Congress to the President, than if given to some other person.

It seems to me that that is one of the incidental difficulties involved in the major issue which was just discussed. Now, then, with respect to this question, it seems to me that if you stop with an answer, if the answer were available, then you have only raised a query in my mind as to whether he did not get some information from that source; and that query, without its being given an affirmative background by the disclosure of the facts, would disturb rather than aid. If you should raise that suspicion or that belief, that probability, then the other side would surely be entitled to inquire as to what you got, except where reasons of State would prevent.

Mr. Kresel: My position, your Honor, if I may interrupt you, is that I have a right to have this witness state what information he did have from that source. But, as I said, I shall not insist upon getting that. I concede to the Government the right to inquire of this witness, if it so desires, as to what information he had from that source. But all I am now seeking to show are the sources of information that this witness had.

The Court: He has told you, Mr. Kresel.

MR. KRESEL: All he said is that he had other sources of information.

THE COURT: No, as I recall, he did state that his position was such that he had this Intelligence Department as a source of information.

MR. ANDERSON: And that he had known something of German activities before the war, as counsellor of the State Department.

THE COURT: Your immediate question is the connection or the details of the connection between the Intelligence Department of the Government of the United States and the position which Mr. Polk held at that time.

MR. KRESEL: I am not asking for the details, your Honor. My question was simply whether it is a fact that during the time that Mr. Polk was counsellor to the State Department, the Intelligence Departments of the Government centered in the State Department.

MR. ANDERSON: That would be most improper.

MR. KRESEL: Why is that improper?

MR. ANDERSON: For the reason that the relations between the various departments of the Government, especially the Secret Service and Intelligence, are matters that nobody is allowed to know about.

MR. KRESEL: But I am not asking what the Secret Service said or did.

THE COURT: Let us go back to the question. Will you please repeat the question? (Q. 98 repeated as recorded above.)

I sustain the objection.

MR. KRESEL: May I have it appear upon the record, if your Honor please, that we claim the right to elicit from this witness every bit of information that he had before him when he signed this Order, from whatever sources he derived it,

saving only such information as upon the witness's statement it is contrary to public policy and to the welfare of the country to reveal, which the Court may rule he should not state.

I state to your Honor that we claim that right because the Government has brought us into this Court and has directly challenged the act of Mr. Polk and of the President, for whom he acted in a matter where discretion had been vested in the President by Congress.

We say that, the Government having taken that position, it cannot now close the door and on one side attack the validity of this Order, say that it is founded upon a misrepresentation of fact and upon suppression of facts, and stop us from showing what information the witness had upon which he acted.

Of course, we bow to your Honor's ruling. If your Honor says we cannot inquire into that, we are stopped. But I want it clearly to appear upon the record what our position is in the matter.

MR. ANDERSON: I will ask your Honor's indulgence for a moment that you can get our position clear. The Government charges in Paragraph 34 of the Bill:

> "that necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of said patents and other rights mentioned in said orders at private sale were not stated or disclosed to said Frank L. Polk, but were withheld from him and suppressed; that other facts in connection therewith, and especially the attitude of the Federal Trade Commission, charged with issuing licenses under the enemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk;"

MR. KRESEL: Will you read the next sentence?
MR. ANDERSON (continuing): "that his signature to said order and the issuance thereof by him were procured as aforesaid through such suppression and misrepresentation of the facts, which, if the same had been known by said Frank L. Polk, would have prevented his signing and issuing said orders."

The Government's contention is that the sole inquiry under that allegation and in relation to that allegation is whether or not the facts were disclosed to Mr. Polk.

THE COURT: What facts?

MR. ANDERSON: The material facts relating to the signing of this order, upon which he predicated his action in signing this order. The charge is that the facts were not disclosed to him.

THE COURT: Do you care to be still more specific, Colonel Anderson?

MR. ANDERSON: Yes, sir. You mean as to what material facts?

THE COURT: Yes.

MR. ANDERSON: Then I would say that any fact which it was the duty of those asking the order to disclose and actively state, which was not disclosed or not actively stated, would come within that limitation. But as to what Mr. Polk may have known or what any one else may have known who exercised this function at that time, there is not a suggestion here as to what he knew or did not know.

The complaint is not of Mr. Polk, but of those who asked the order of him; and the sole inquiry is what they did and what they disclosed. If they disclosed all the facts that they were called upon to disclose, or if they disclosed facts that they purported to disclose, accurately, then the

question as to what Mr. Polk knew in addition would not be subject to inquiry.

Have I made myself clear on that subject? I hope I have.

THE COURT: Yes, but it seems to me there is that difficulty, Mr. Anderson. I can see from your standpoint that possibly any evidence which would tend to show that The Chemical Foundation was endeavoring, or those who were its common stockholders, for selfish or financial reasons, to secure a sale of these patents, a private sale to The Chemical Foundation, and that the stockholders were not induced solely by patriotism, would be a fact which might be the determining fact from your standpoint as to whether Mr. Polk should or should not have signed that order.

I can likewise see the standpoint of Mr. Kresel. If I understand his contention correctly, it is that that would necessarily be an incident, that is, the possible commercial profit to any persons who were engaged in the chemical or dye industry in this country, and that going through years of building up such an industry would be a condition or a fact that would necessarily be presupposed by any individual familiar with the business, and particularly a person of the experience of a President or of any person connected with the State Department, and that the person authorizing such sale might consider that such interest would be a necessary incident of such sale, and that if the persons so purchasing patents engaged in practices in violation of the Sherman or Clayton Act, that those improper practices could be dealt with by the Government subsequently; and that for reasons which were known to the Department of State and to the President, the order might have been signed wholly with-

out regard to such purpose on the part of the chemical and dye industry to eventually profit by the taking over of those patents.

MR. ANDERSON: Your Honor will recall that the Statute provides that the order must state the reasons therefor in the public interest; and my view is that in view of the terms of that Statute, the only reasons that can be considered are those stated in the order.

MR. KRESEL: Yes, but the reasons which actuated the President or Mr. Polk in assigning those reasons in the order are just as effectual and just as important as the reasons which are stated as the basis of them.

THE COURT: If I recall, Colonel Anderson, you stated that you could challenge and question the reasons.

MR. ANDERSON: As stated in the order, whether those reasons were sound and whether they completely stated the facts, that is, whether the facts upon which they were predicated were completely stated. I can question that. But I take it here that no reason can be taken to justify this sale by a private sale except the reasons stated in the order, and that we can only inquire into the facts that underlie those reasons.

MR. KRESEL: Let me give an illustration, your Honor.

THE COURT: Pardon me, Mr. Kresel.

MR. ANDERSON: The President must state the reasons. Otherwise the order is not valid.

THE COURT: Then your contention is that you may inquire into the accuracy of the facts stated in those reasons.

MR. ANDERSON: Yes, the accuracy of the facts.

THE COURT: You may take issue not only by

way of demurrer to the reasons, but by a denial or traverse upon the accuracy of the facts.

MR. ANDERSON: In other words, I take it, where we show the order was prepared by some one else and sent to the President as stating the reasons, in the public interest, or through Mr. Polk, that we can inquire as to whether those reasons were accurately or correctly stated, but we cannot inquire into what knowledge Mr. Polk may have had, which were not stated in the order, in the public interest. Because, if that were true, the provision in the Act requiring the President to state his reasons would be an absolute nullity.

MR. KRESEL: Your Honor will grant me a few minutes. I think I can by one illustration show the fallacy of the argument on the other side. Take the first reason that is assigned in this order by Mr. Polk, namely, that the Letters Patent, trademarks and similar rights cannot be sold to the best advantage at public sale.

Let me assume an extreme case. Let me assume that Mr. Polk in his official position had knowledge that the German Government had made an arrangement with some particular person to go and bid these patents in at a public sale. Just let us assume that for the purpose of the argument.

Is it contended by the Government that Mr. Polk and the President, if your Honor is to inquire as to their reasons, are to be estopped from telling your Honor what they had in mind as a basis for making that statement? Is it possible that they can attack the transaction and yet stop us from showing the justification of it? I do not understand Colonel Anderson's reasoning in this matter. He is always very clear in his reasoning. But I must confess I do not understand this.

They cannot attack the transaction and yet stop us from showing the justice of it and the fairness.

THE COURT: Mr. Smart, will you turn back to the last question, please.

(XQ. 98 repeated as recorded above.)

THE COURT: Has counsel any objection to my inquiring, as I am taking up again the question that I overruled, from Mr. Polk as to whether the facts called for by your question are facts that are well known or are known only to the department?

MR. KRESEL: Your Honor recalls the question. It was as to whether the Intelligence Department centered in the State Department. I see no objection to your Honor making the inquiry.

MR. ANDERSON: We have no objection to your Honor making any inquiry.

By THE COURT:

Q. 99. The question I would like to ask is whether the facts called for by that question of Mr. Kresel are facts that are known generally to the public and are generally available to the public, or does the question call for facts which are known or should be known only to the Executive Departments?

A. The particular question would call for a reply that is known to the public.

THE COURT: Then inasmuch as the objection was sustained, mainly for reasons of State and not otherwise, I shall withdraw my ruling sustaining the objection and allow the general rule of practice that we have adopted in this case to apply to that question as well.

MR. ANDERSON: Will your Honor permit me to put my objection in a little more specific form?

THE COURT: I thought you had.

MR. ANDERSON: I want to make the objection

to the question specifically. I want to object to this question and any answer thereto, and at the same time move to strike out all the examination thus far that relates to matters which are not the basis of the facts stated in the executive order.

I wish to object to this question specifically on the ground, in addition to being immaterial and irrelevant, that it makes inquiry as to matters relating to the Government which are not involved in this case and which, with deference, we think, should not be inquired about.

Second, that under the Statute under which this order was entered or purported to be entered, the executive officer or person exercising the power was required to state his reasons for his action, and it is not pertinent to inquire into matters that are not covered by the reasons given in the executive order.

THE COURT: I think this inquiry comes specifically under the first reason assigned, as illustrated by Mr. Kresel's last statement.

If you recall the question, Mr. Polk, will you answer it; and if an inquiry is made from you, either by Mr. Kresel or Colonel Anderson, which calls for disclosures that should not be made public for reasons of State, will you indicate by saying so.

By MR. KRESEL:

XQ. 100. Mr. Polk, I am going to ask you some questions. I will not ask you what the information was that you had, and, with Colonel Anderson's permission, in order to avoid eliciting any such facts, I am going to make my questions leading. Of course, if the Colonel objects to it, I shall try to mend my way.

MR. ANDERSON: I have not objected on that ground yet.

MR. KRESEL: You did on one occasion.

XQ. 101. As counsellor of the State Department, did you have charge of arranging with the British and French authorities for permission to allow German drugs to be passed through the blockade?

A. Drugs and dyes, yes.

MR. ANDERSON: Your Honor understands that this is all subject to objection.

THE COURT: I understand that that all is, and I gave you permission to take the answer to the preceding question, Mr. Kresel?

MR. KRESEL: Pardon me.

THE COURT: I overruled the objection to your preceding question. You may take the answer to that, if you want to.

MR. KRESEL: I understood it had been answered.

THE WITNESS: No, it had not.

MR. KRESEL: I beg your pardon. Will you now answer it, please?

THE WITNESS: What was the question?

XQ. 102. The question was whether it was a fact that the Intelligence Department of the Government centered in the State Department?

A. Not exactly.

XQ. 103. Will you state what was the fact?

A. Prior to our entering the war, in the fall of 1915, all the secret service agencies sent their information into my office. That office was made a clearing house for secret service information.

XQ. 104. That is all I desire to establish.

A. The reason I answer that question is, that was published in the papers at the time.

XQ. 105. Now, to return to my other question, that I was inquiring.

A. But, as I say, that ceased in April or May, 1917, after we got into the war. We still had information, but it was not a clearing house.

XQ. 106. Now, do you recall what drugs were imported from Germany pursuant to this arrangement that you made with the British and French Embassies?

A. The arrangement was not made with the British and French. The arrangement was made with the British.

XQ. 107. With the British.

A. In regard to the drugs, and that was for the importation of particularly salvarsan and novocaine.

XQ. 108. Prior to your acting in such a way as resulted in getting the British to agree to this, had you received any information as to the necessities of the country for such drugs?

A. Yes.

XQ. 109. Had you been in consultation with officers who represented to you, in your official capacity, the necessities of the country for those drugs?

A. We received from the drug houses and from the heads of institutions statements that there was a crying need for those particular drugs.

XQ. 110. Had you received any information as to the effects of substitute drugs?

A. I recall that some of these people stated that the so-called substitutes that were either manufactured or imported from elsewhere into this country, were in some instances ineffective; in other instances, dangerous.

XQ. 111. Now, as to dyes. Did you have information in your official capacity that with the outbreak of the European war the importation of German dyes ceased?

A. Very much curtailed and at one time it was prohibited by an embargo in Germany.

XQ. 112. Was information brought to you in your

official capacity of the requirements of the country for such dyes?

A. Yes, I discussed the question with the Secretary of Commerce.

XQ. 113. Mr. Redfield?

A. Mr. Redfield.

XQ. 114. I am not inquiring what your discussion was, but I am inquiring of you as to whether you knew, had gained information before you made this order, of the importance of the dye industry and of the dependence that this country had on Germany for dyes?

A. Yes.

XQ. 115. You knew that to be a fact?

A. I knew that to be a fact.

XQ. 116. Do you remember any particular institution that made representations to you in your official capacity as to the importance of the dye industry in the country from a point of view of munition supplies and dyes?

MR. ANDERSON: I will have to object, if your Honor please, if we are going into representations and hearsay. I do not know where we will stop.

MR. KRESEL: I frankly admit, your Honor, that this testimony might be hearsay, but I claim that we have a right to show it as information in the possession of this official as a basis of his action.

THE COURT: Will you turn to the third reason assigned by Mr. Polk: "The public interest will be best served by a wide use of the inventions covered by said letters patent and similar rights and such wide use can be most readily promoted by the licenses which the said The Chemical Foundation, Inc., is by its charter obligated to grant."

MR. KRESEL: Yes, sir, that is certainly pertinent to that, isn't it—to show that he in his official capacity knew of the importance of a chemi-

cal industry to a country, because it was the source of the supply of munitions in time of war and of dyes and drugs in time of peace.

THE COURT: It is not sufficiently clear, your objection, to apply the general rule to that question that was applied to the other.

MR. ANDERSON: Does your Honor wish me to make the objection clearer, or is that for the status of the record?

THE COURT: No, I do not mean the objection is not sufficiently specific. You may have the answer.

MR. KRESEL: May I have the question read?

MR. ANDERSON: I note an exception.

THE COURT: Yes, the exceptions, Colonel Anderson, will be implied in all cases.

MR. ANDERSON: Yes. Thank you.

(XQ. 116 read as recorded above.)

A. Individuals pointed out the close relation between dyes and chemicals in the production of munitions and pointed out our dependence on the Germans for certain processes and patents.

XQ. 117. Was it pointed out to you by representatives of our industries that if the Germans had these patents that were here involved they could after the war destroy any chemical industry that might be built up during the war?

A. That was pointed out.

XQ. 118. Without asking you to state what your conversation with Secretary Redfield was, will you state whether it was in connection with building up a dye industry in this country?

A. It was.

XQ. 119. Was the question of building up a dye industry in this country discussed with the President?

A. Yes.

MR. ANDERSON: Well, did he discuss it, or who discussed it?

MR. KRESEL: I am coming to that.

XQ. 120. Was it discussed at Cabinet meetings?

A. Not at any of the Cabinet meetings at which I was present.

MR. ANDERSON: If your Honor please, I do not think we have a right to go into Cabinet meetings here. If we are going into Cabinet meetings, I am going into them, too, at a later time. I will have to.

MR. KRESEL: That is right.

MR. ANDERSON: I would not do it, but if we are going into Cabinet meetings here we might get very far afield.

THE WITNESS: I would not feel at liberty to answer any question bearing on the discussion at Cabinet meetings anyway, Colonel.

MR. ANDERSON: If you say it was discussed at Cabinet meetings—

THE WITNESS: No, I say not when I was present. I do not know whether it was discussed or not.

MR. ANDERSON: Oh, I thought you said it was discussed.

THE WITNESS: No, I hope the answer was not that way.

THE COURT: I am not going to hear any discussion now; I am going to let you put another question and then we will hear any discussion upon that.

THE WITNESS: I would not answer such a question.

XQ. 121. I will ask you this question—whether as the result of the representations that were made to you in your official capacity, the discussions with Secretary Redfield, the conviction that the country was

dependent upon Germany for these essential dyes and drugs and munitions—whether the Government formed any policy as to building up a dye industry in this country. Just say yes or no to that.

MR. ANDERSON: One moment. I first would like to ask what was the answer to the preceding question, if I may ask, sir, on the discussion at Cabinet meetings.

MR. KRESEL: He said he was not present.

(The reporter read as follows: "THE WITNESS: No, I say not when I was present. I do not know whether it was discussed or not.")

MR. ANDERSON: I wish to object to the particular question that was asked, first because it is undertaking to draw a conclusion of the witness.

THE COURT: This is the last question, Colonel?

MR. ANDERSON: The last question.

THE COURT: Which was what?

(XQ. 121 read by the stenographer as above recorded.)

MR. ANDERSON: Now I would object to that on the ground that it is asking generally to state as a result of representations made to the witness, without specifying who, where, when, whether it was ten years ago or one year ago; second, it undertakes to predicate his answer upon a conviction—of whom? The country? The witness? Whose conviction? Therefore, it would be a legal error. Third, that the policy of the United States with respect to business is fixed by Congress and not by the witness, however distinguished may have been his position or his qualifications, and therefore I do not think that any witness could be asked as to what policy was formulated unless that policy was put into the form of law, an order by

an authorized administration, and then it would have to be produced.

MR. KRESEL: May I say that I will show the law—I will follow it up with the law.

MR. ANDERSON: Then the law speaks for itself.

THE COURT: Colonel Anderson, your contention is that the Trading with the Enemy Act did not confer the power?

MR. ANDERSON: That is the question.

THE COURT: Your contention is that the Trading with the Enemy Act did not confer the power for the Executive Department to decide upon a policy.

MR. ANDERSON: Certainly.

THE COURT: Yes, that is your contention.

MR. ANDERSON: Yes, certainly.

THE COURT: But Mr. Kresel's contention is the opposite, that there was a conference of power which was broad enough to enable them to do this very thing, and now he is inquiring as to the reasons why they did it. Unless I determine *in limine* whether your contention of the law is right or whether Mr. Kresel's contention of the law is right, then I have got to take evidence that may be considered under each of those contentions, have I not?

MR. ANDERSON: Yes. If your Honor will permit me—I regret to take the time but, if your Honor will permit me, the law speaks for itself as to what it means and the witness can not testify as to that.

THE COURT: Surely.

MR. ANDERSON: That is first. Second, the policy of Government must be drawn from that law, because Congress alone can fix a policy with respect to industry.

THE COURT: Are you not overlooking this assumption? You have gotten in your mind probably, that this act does not confer the power, that you are overlooking the undecided question as to whether the power is there, and there is a latitude of discretion for the Executive Department, in which the Executive Department could move.

Now then, Mr. Kresel's question assumes the existence of power, and what the Executive Department decided to do in the proper exercise of that power, as it saw.

MR. ANDERSON: If your Honor will permit me, my third point leads up to just what your Honor suggested, and that is, if we are going to concede that the Executive Department fixes a policy, if the witness can fix the policy, he can state what the policy was. He can state the facts.

MR. KRESEL: That is what he was asked for.

MR. ANDERSON: But he was asked for the policy, the policy that had been fixed, as a conclusion, I presume, by the entire Executive Department. Certainly I would not say that one witness could get on the stand, however distinguished that witness was, and undertake to say what the fixed policy of the Government was, unless it brought in something that represented the action of the Executive Department of the Government.

THE COURT: The order of the President giving Mr. Polk the power to authorize a proper sale under the Trading with the Enemy Act, enables him to say, and he is the one person who would be authorized to say, as to whether the Government had the policy. I will overrule the objection, and you may take an exception.

MR. ANDERSON: Exception.

XQ. 122. I was asking you, Mr. Polk, whether it

was the policy of the Government at this time, in view of the information that the Government was in possession of, as to the dependence of the country upon Germany for a supply of these essential dyes and munitions and drugs, to build up a chemical industry in this country?

MR. ANDERSON: My objection is noted, and exception?

THE COURT: Yes.

A. You mean the policy of the Executive Department?

XQ. 123. Yes, of course.

A. Yes.

XQ. 124. Now, do you remember?

A. Wait, pardon me. Mr. Kresel—when do you mean?

XQ. 125. I mean at the time.

A. Before we were in the war?

XQ. 126. Before we were in the war, certainly. When we were threatened with it.

A. I do not know that I can answer that question. I mean, when you say the whole—there were some members of the Executive Department who felt and were permitted to urge legislation, and legislation was enacted, but that was——

XQ. 127. That is the extent to which you want to testify as to the policy?

A. Yes.

XQ. 128. Very well. I will take that. Now, the legislation you talk of is what?

A. It was a Bill introduced by the late Representative Hill, Ebenezer Hill, of Connecticut, Republican member from Connecticut.

XQ. 129. Now I do not want to go into the details of that legislation, except to ask you whether it is a fact that pursuant to this policy that you have stated, the administration was in favor and urged, although

it was a Democratic administration, high tariff upon importations of dyes?

MR. ANDERSON: I think the record will speak. It is urged. The only possible way to be urged was either by a message by the President or by a report of a committee or by legislative act.

THE COURT: There is record evidence of that which has been put in evidence, or which you have called attention to, I think, a message from Ferry to President Wilson. There is no better evidence on that point than is there.

MR. KRESEL: By the President?

MR. ANDERSON: By President Wilson. There is no better evidence on that point than is there.

That message was May, 1919, and the Bill to which Mr. Polk refers was before we went into the war, so I do not think that message could have any relation to it, but I do respectfully insist that if there is any such urgency upon Congress or any other body, the only person that can co-operate with Congress is the President, and that is the only way the Executive power can speak.

THE COURT: I think the objection is well taken. I will hear you, if you wish.

MR. KRESEL: No, your Honor. If your Honor is convinced of that, I shall not pursue it.

XQ. 130. Did you personally, in your official capacity, urge the passing of this Hill Bill?

MR. ANDERSON: I object to that.

MR. KRESEL: Have I not a right to show that?

MR. ANDERSON: This is a court of law, and it does not speak for the administration.

THE COURT: This is not the Trading with the Enemy Act?

MR. KRESEL: No, it is not the Trading with the Enemy Act.

MR. ANDERSON: It is before we ever went into the war.

THE COURT: I do not see at all that we are concerned with the policy of any administration with respect to dyes and chemicals before we went into the war. It seems to me if we are concerned with a policy, it is with the policy for a limited period of time immediately prior to February 26, 1919, the date on which Mr. Polk signed this order.

MR. KRESEL: No, your Honor. You will pardon me if I will argue it with you. The point that we make is that when Mr. Polk signed this order, in February, 1919, he had information and he could divorce himself from it as to the dependence of this country upon Germany for a supply of essential chemicals and dyes. Information that he had obtained in an official capacity, information that came to him quite apart from Mr. Palmer's talk with him, or Mr. Palmer's report or Mr. Palmer's letter. That is what I am trying to show, and it seems to me, with all due deference to your Honor's opinion, that it makes no difference when he obtained that information —whether it was before the enactment of the Trading with the Enemy Act or subsequent thereto, as long as it was prior to his making this order.

THE COURT: And you show continuity, of course.

MR. KRESEL: Yes, of course.

THE COURT: I assume you are approaching it from a different aspect than I did. I was approaching it from the date of the order on going back, and you are going forward.

MR. KRESEL: I do not want to take any more time with that than necessary. May the witness

answer the last question, or does your Honor——

THE COURT: No, I think the objection is well taken, Mr. Kresel. You may take his answer under Rule 46, if you wish.

MR. KRESEL: No. That is enough.

XQ. 131. Mr. Polk, it is charged in this Bill of Complaint that certain corporations who are named in the Bill, engaged in the chemical industry in this country, and certain other concerns not named, likewise engaged in the chemical industry in this country, and certain trade associations entered into a conspiracy to establish and maintain a monopoly of the dye industry of the country, and that pursuant to that conspiracy, and in order to enable them to perpetuate their monopoly, they conspired to induce the Alien Property Custodian to make this sale of the patents here involved to the Chemical Foundation. Now, I am going to ask you whether, assuming that you had known as a fact that there was a monopoly here such as I have described, as is alleged in the Bill of Complaint, whether you would nevertheless have authorized the sale of these patents?

A. That is surely a hypothetical question.

XQ. 132. Of course, but I have to put it in that way.

A. Well, I would assume that the Clayton law, and the Sherman law would have protected the country from a monopoly; and in view of the statement that these patents were to be sold to all who might require them——

XQ. 133. Licenses, you mean?

A. Licenses. I would have signed it.

THE COURT: Might I ask why?

MR. KRESEL: Yes, sir.

XQ. 134. The Court is asking why?

A. Why I would have signed the order?

THE COURT: Yes.

A. (continuing): Because I felt, your Honor, here was an opportunity to build up a real chemical industry in this country; something we never had before. As I stated, we were completely at the mercy of Germany. These patents were, many of them, not being used in this country, were being held, for instance Swiss and French patents, being brought in. I say that was the effect; whether they were held for that purpose I do not know, but that was the effect; and for that reason it appealed to me that this was a wise plan, to make the American people independent of foreign controlled patents.

XQ. 135. I assume that the consideration that munitions of war were so closely related to the dye industry and covered by some of the patents, had some influence with you?

A. At that moment, that was not so pressing as the other causes, because we were negotiating peace. That is also a consideration for the order.

XQ. 136. Now, Mr. Polk, it is also alleged in the Bill that—I think I had better read the Bill so as not to mis-state it. It is stated in the Bill (I am reading from paragraph 34):

> "that other facts in connection therewith, and especially the attitude of the Federal Trade Commission, charged with issuing licenses under the enemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk."

Now, I am not now asking you whether any such facts were misrepresented or misstated to you. My question at this time is whether you knew that by the same order, Executive order of December 3, 1918, made by President Wilson, by which he delegated to you the power to be exercised under this amended Section 12 of the Trading with the Enemy Act, he at the same time defined the respective duties and responsi-

bilities with reference to enemy property as between the Federal Trade Commission and the Alien Property Custodian?

A. I knew he had done it. I did not know it was in the same order.

XQ. 137. Yes. You knew, therefore, when you signed this order, that whatever rights and duties of those two respective departments were concerned, were not only fixed by the Trading with the Enemy Act, but were regulated by an Executive order of the President?

A. I knew there was such an order.

XQ. 138. And now I ask you whether any facts with respect to the attitude of the Federal Trade Commission were misstated or misrepresented to you by anybody?

A. I do not recall any discussion.

XQ. 139. Either with Mr. Palmer or with the gentleman who brought you the order?

A. I do not recall any discussion at that time.

XQ. 140. Was your signature to this order of February 26, 1919, and the one of April 5, 1919, and the issuance of those orders procured from you by the suppression or misrepresentation of any facts?

A. Not that I have since ascertained.

MR. ANDERSON: If your Honor please, I object to it, and move to strike that answer out. That is an absolute conclusion. It does not appear whether the witness knew all the facts in this matter; and I ask that the question and answer be stricken out.

MR. KRESEL: But the allegation is a conclusion. They do not tell us what facts were misrepresented, as I pointed out in my opening.

MR. ANDERSON: That is a question of argument to the Court. My point is that this witness can not say that all the facts were stated.

THE COURT: I understand your contention, Colonel Anderson. I will take the answer under the general rule, and as I see it, it should be limited to such facts as he shall have disclosed when he leaves the witness stand, he is now familiar with; and not such facts as are not now brought to his attention or shown elsewhere to have been brought to his attention.

XQ. 141. As far as you know, Mr. Polk, were any necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of these patents, not stated or disclosed to you but withheld from you and suppressed, as alleged in the Bill?

MR. ANDERSON: I object, for the same reason.

THE COURT: Same ruling.

MR. ANDERSON: Exception.

A. Not that I know of.

XQ. 142. Do you know of any facts which have been called to your attention by the Government upon its examination, or upon my examination, which if you had known at the time you signed these two orders, you would have declined to sign them?

A. No.

XQ. 143. Is it true, as alleged in the Bill, that you signed these orders without knowledge of the facts?

MR. ANDERSON: That is going a little far.

MR. KRESEL: I am reading what is alleged in this Bill.

THE COURT: That is not a physical impossibility, but it is a logical impossibility, for him to answer that; because I do not know that he knows all the facts now. I do not see how it is possible to answer that question; do you?

MR. KRESEL: If your Honor asked me that directly, I should say yes; and I think this witness who has now been examined by both sides, who

has tried to refresh his recollection, who knows about the transaction, can state whether all the essential facts are before him or not.

THE COURT: Well, he has told us what facts were before him. He has answered those last two or three questions, which I will not repeat. I think that must be a conclusion from the general evidence of this witness and all the other evidence in the case.

I do not think that the answer, if he stated it, whatever it might be, would help you. It would not serve me at all. Whether it would serve some other purpose or not, I cannot say.

MR. KRESEL: Of course, your Honor is well aware of the rule that in cases where fraud is charged, or misrepresentation or suppression of facts, as is charged here, that the person so charged or as to whom it is so charged, is usually asked to categorically deny the statements.

I can not supply the facts, because the Government has not alleged them. All I can do is to repeat the language of the Bill.

THE COURT: I do not see how the witness can answer the question. I do not see what good it would do if he did answer it, because it is the facts, and you have a multitude of facts on both sides that have been elicited from this and other witnesses.

MR. KRESEL: Very well, your Honor, I will not pursue that.

XQ. 144. Now, Mr. Polk, the Government has claimed here that the order of the President, delegating the power to you under which you made the orders in question, was invalid because the order is made to you, "Frank L. Polk," and not to you "Frank L. Polk, Counsellor of the State Department"—or Under-Secretary of State, whichever was your desig-

nation. It is therefore necessary for me to inquire of you how this appointment came to you; if you will state?

MR. ANDERSON: If your Honor please, I wish to note an exception now. These are all documents. They speak for themselves. Mr. Polk has exercised the power, signed orders, and everything of that sort; and it is a matter of construction of what those orders mean; and Mr. Polk cannot testify on that subject.

THE COURT: That is as I see it, Mr. Kresel. I do not see how Mr. Polk can help us by stating the facts which led the President to designate him. Now then, you have shown already the office which he then held.

MR. KRESEL: I am going to ask one more question on that.

THE COURT: Yes.

XQ. 145. At this time when the designation was made by the President authorizing you to exercise this power, you were counsellor of the State Department?

A. The official title was "Counsellor for the Department of State."

XQ. 146. "Counsellor for the Department of State"—and is that an office of the United States?

MR. ANDERSON: I object. That is a matter of law absolutely.

THE COURT: The objection is sustained. That involves a construction of the Constitution and of the Statutes, and if counsel can show that, while I would take the witness's opinion ordinarily on it, I do not think it is a matter of testimony.

XQ. 147. Were you an officer of the United States?

MR. ANDERSON: I make the same objection, that it is a conclusion of law.

THE COURT: Objection sustained. You may show what—

MR. KRESEL: I am going to, your Honor.

XQ. 148. Were you nominated for that office by the President of the United States?

MR. ANDERSON: I want to object to that, because I would not want to put him to the trouble of bringing a record. I am willing that the witness testify to it.

MR. KRESEL: What has become of this desire to get all the facts before the Court?

MR. ANDERSON: I object to that.

MR. KRESEL: Maybe you will make me bring the Constitution, so as to prove that.

THE COURT: Are you prepared to concede the fact, or do you want to elicit it from the witness?

MR. ANDERSON: I am perfectly willing to stipulate on the facts that Mr. Polk was nominated to the office as Under-Secretary of State, by the State Department, and was confirmed by the Senate—

THE COURT: Prior—

MR. ANDERSON: Prior to the 3rd day of December, 1918.

THE COURT: Filling that office and exercising his powers and duties at the time of the execution by him of each of these orders of his that has been put in evidence?

MR. ANDERSON: That his occupation—what I mean is, that he continued in that office without resignation until after—what was the date of your final retirement?

THE WITNESS: June 15, 1920.

MR. ANDERSON: Whether he was exercising the functions, I do not know.

THE COURT: I think that covers the facts that you want, Mr. Kresel?

MR. KRESEL: Yes.

MR. ANDERSON: I want to object to these remarks by counsel. I do not want to have personal controversy in this case, but I will not submit, with all due deference to the Court, to any insinuations of that kind by counsel. I want to be understood on that.

THE COURT: There have been very few on either side, Mr. Anderson, and I hope that there will be fewer on both sides.

MR. ANDERSON: I am sure I shall co-operate.

THE COURT: You may proceed, Mr. Kresel.

By MR. KRESEL:

XQ. 149. Now, pursuant to that order of the President, of December 3, 1918, did you sign other Executive orders in addition to the two here involved, those others likewise relating to the disposition of property in the hands of the Alien Property Custodian?

MR. ANDERSON: I object to that on the ground that it is immateral, what orders Mr. Polk signed. The question of the validity of these orders, if they are valid, is a question of law; if they are invalid, he might have signed a thousand and they would not have affected the validity of these in the slightest.

MR. KRESEL: I desire to show, if your Honor please, that this authority by Mr. Polk was exercised during a period of eight months—yes, more than eight months; that he signed under that authority many like and similar orders authorizing private sales and rejection of bids at public sales of property in the hands of the Alien Property Custodian.

I shall follow up that testimony, if allowed in, with evidence that in no case has the Government of the United States challenged the validity

of any such orders, and that in one case the Government of the United States based its title to property involved upon an order so made by Mr. Polk under this designation.

THE COURT: I shall take such testimony this afternoon under our general rule of practice adopted in this case, without expressing any view as to whether it is ultimately to be deemed relevant or material. We will now suspend this case, in order to go over our trial list, and charge the Grand Jury, and I think that will take half an hour. I think probably we had better convene again at 1:15 o'clock, Standard Time.

AFTER RECESS.

MR. KRESEL: If your Honor please, I now offer in evidence copies of orders made by Mr. Polk under the authority of the Executive order of December 3, 1918, the first one being dated December 4, 1918, and the last one being dated July 8, 1919, said copies being found at pages 90 to 113 inclusive of this book, which is a Government document entitled, "Trading with the Enemy Act and amendments thereto, together with proclamations, Executive orders and orders issued by Frank L. Polk, Acting Secretary of State, under authority of Executive order of December 3, 1918, issued thereunder, to and including November 25, 1919."

I understand that under our stipulation with the Government there is no question as to the authenticity of these instruments. Is that correct, Mr. Galloway?

MR. GALLOWAY: That is right. The book is not covered by the stipulation, but we do not object to it.

THE COURT: Then you offer this documentary

evidence instead of taking the answer to the question that was unanswered?

MR. KRESEL: Exactly, your Honor. I think it will shorten our inquiry.

THE COURT: Admitted.

MR. ANDERSON: May I suggest to counsel if it would be possible—those are very long documents and I do not understand the terms of the order relate to any matter that you want to put in; do they?

MR. KRESEL: Yes, I am very anxious to have before the Court the forms of these orders and the reasons which are assigned in each case by Mr. Polk for the making of the orders, as required by the Statute. Does your Honor see?

THE COURT: As indicating the caution that must be exercised in invalidating the orders here challenged by the Government.

MR. KRESEL: That is one of the reasons, yes, sir.

MR. ANDERSON: If your Honor please, we do not object to the introduction of this evidence upon any question of its authenticity, and admit it, and agree that in any matter of formal proof authenticity is waived. We do object to the evidence as being irrelevant and immaterial to the issues of this case.

MR. KRESEL: As to the length of them, Colonel, as we have already agreed with you on another matter—I do not recall it now—we will endeavor to shorten these as much as possible. I think we can do that.

THE COURT: By agreement.

MR. KRESEL: By agreement of counsel.

THE COURT: That you may not leave out anything that the other side wants. They may be admitted. You have no objection to their being admitted out of order?

MR. ANDERSON: I do not raise any objection on that ground.

THE COURT: They will be admitted, each order having a separate number.

MR. KRESEL: I think that would be better, your Honor.

MR. ANDERSON: If I might say in addition, that I understand that the objection of irrelevancy and immateriality, without repeating it, carries with it the objections generally stated to this character of evidence in our opening statement.

MR. KRESEL: I so understand.

THE COURT: And all evidence which is offered at any time in the cross-examination or in defense by the defendant, is objected to by you save only that of the value of these patents at the time of their assignments; and that all such testimony is admitted over your objection and exception, is conclusively presumed to have been entered.

Received in evidence and marked respectively "Plaintiff's Exhibits Nos. 4, 4-A, 4-B, 4-C, 4-D, 4-E, 4-F, 4-G, 4-H, 4-I, 4-J, 4-K, 4-L, 4-M, 4-N, 4-O, 4-P, and 4-Q." (Same as Plaintiff's Exhibits Nos. 728 to 728-Q, incl. *See Exhibits, Vol. III, pages 1874 to 1924, incl.*)

THE COURT: Are you through with your examination, Mr. Kresel?

MR. KRESEL: Yes, your Honor.

RE-DIRECT EXAMINATION

By MR. ANDERSON:

RDQ. 150. Mr. Polk, I failed to ask you one question this morning that I would like to ask now, and of course leaving it open to cross-examination if it is

necessary or desired, and that is, were you notified of your election as a member of the Board of Directors of The Chemical Foundation about June 22nd, 1922?

A. Was I notified?

RDQ. 151. Yes.

A. June?

RDQ. 152. About June 22nd, 1922, something like that?

A. No.

RDQ. 152-a. You do not recall at all your election to membership on the Board?

A. Colonel, some one mentioned that my name was being considered, but I was never told that I had been elected. I never said that I would accept.

RDQ. 153. You never said that you would accept?

A. No; I mean the decision was never put up to me. Whether there was an election or not I do not know, but I was never told. I do not recall that I was told that there was an election, but I was never asked whether I would serve.

It may have been that they said I had been elected, and for some reason it was never put up to me to say yes or no to it.

RDQ. 154. You never did agree to serve as a member of the Board, did you?

A. No.

RDQ. 155. Mr. Polk, I understood you to say on cross-examination that your action in this matter was taken in order that the industry (meaning the chemical and dye industry) affected by these patents, might be Americanized; did I catch your statement correctly?

A. That was the idea. I did not use quite those words. In other words, we should create—it should be created in this country—chemical and dye industry.

RDQ. 156-7. Your idea then in this matter was that by making this sale in the manner which has been

discussed with you this morning it would be of benefit to the American industry?

A. That was one of the reasons, yes.

RDQ. 158. Do you recall when you first heard of the proposal to sell these German patents affecting the chemical and dye industry to the Chemical Foundation?

A. No, I could not state that positively, Colonel.

RDQ. 159. The letter of Mr. Palmer transmitting this first order to you on the 26th referred to the fact that he had hoped to see you that morning but arrived too late. Can you now locate about the time of your telephone conversation with Mr. Palmer?

A. No, it was some time during the day; it was within two or three hours of the receipt of the letter.

RDQ. 160. Did you not state to Mr. Palmer in that conversation that if he would prepare his order and send it over to you, you would sign it?

A. I do not recall it. My recollection is that the conversation was after the letter was received.

RDQ. 161. After the letter was received?

A. That is my recollection, but I would not be sure.

RDQ. 162. Is it or not true that your first information as to the proposed sale of these patents, trademarks, etc., was really the receipt of that letter?

A. The first official information, yes.

RDQ. 163. Well, did you have any other information on the subject that you recall now independently?

A. Well, I would not want to state that positively, Colonel. I have a recollection that there was some general discussion in which I had taken no part.

RDQ. 164. In which you took no part?

A. In which I took no part at all. I heard it discussed some time about February 26th, somewhere prior to that, but I would not be positive about that.

RDQ. 165. Do you know whom you heard discuss it?

A. No.

RDQ. 166. Just a current, desultory discussion?

A. Yes, I imagine so, something in the Department, either brought up by the trade adviser or some subordinate; I am not sure of that.

RDQ. 167. You do not remember anything that was said at that discussion, do you?

A. No. As a matter of fact, the first definite information I received was that order of the 26th.

RDQ. 168. At the time that you signed that order then, the information which you had on the subject, this particular subject covered by the order, was the information contained in that letter and in the accompanying report, was it not?

A. In the report and the letter and such conversation as I had with the man who brought it over, which was probably very brief, and with Mr. Palmer.

RDQ. 169. Can you state approximately how long was that conversation with Mr. Palmer over the telephone on the subject?

A. Either telephone or in the office, I am not sure which; but I have no definite recollection on that.

RDQ. 170. Mr. Polk, do you remember anything that was said in that conversation with Mr. Palmer in addition to his report? Have you any independent recollection of it?

A. I remember the question I asked.

RDQ. 171. Would you state it?

A. I asked whether this transaction had been approved by the so-called Sales Committee.

RDQ. 172. You were told that it had?

A. Told that it had been.

RDQ. 173. When you speak of this transaction, do you mean the entire transaction, price and everything of that sort?

A. I could not very well separate it in my mind. The impression on my mind was the whole transaction. That is the impression I have now.

RDQ. 174. The whole transaction as embodied in Mr. Palmer's report had been approved by the Sales Committee, was the impression you got?

A. I don't know whether the report was approved by the Committee. I didn't mean that.

RDQ. I did not mean the report. I mean the essentials of the transaction?

A. Yes, that the sale to the Chemical Foundation was approved by the Sales Committee.

RDQ. 176. You stated this morning that you discussed the question of price with Mr. Palmer. Were you advised or did you gain the idea in the discussion that the question of price had been taken up with the Sales Committee?

A. I separated that question. I rather assumed that it had been.

RDQ. 177. You assumed that it had been?

A. Yes.

RDQ. 178. In other words, you assumed and gathered the impression from the facts presented to you at that time, either in the report or in personal conversation or telephone conversation as the case might be, that all of the essential elements of this transaction had been approved by the Sales Committee?

A. That was my impression.

RDQ. 179. In this order you state that the Alien Property Custodian may sell all Letters Patent, trademarks and rights under Letters Patent and Trademarks, including all profits and damages recoverable at law or in equity for past infringements thereof, which the Alien Property Custodian may seize or may have seized under the provisions of said Trading with the Enemy Act and amendments thereto now or hereafter enacted, and which he from time to time shall de-

termine relate to the objects and purposes of The Chemical Foundation, Inc., as expressly defined in its Charter. Did you know at that time or was it stated to you to what extent the seizure of these patents had been carried and how many of them had been seized?

A. How many were actually in hand, do you mean?

RDQ. 180. Yes.

A. No.

RDQ. 181. Did you know or did you have a list of the patents, trade-marks, etc., which had actually been acquired by the Alien Property Custodian?

A. The whole 4500?

RDQ. 182. Well, whatever they were at that time?

A. No, I do not think I did.

RDQ. 183. You did not have any list?

A. No.

RDQ. 184. You did not know at that time what was the name of the trade-marks which were proposed to be seized, since you left that to be determined, their character and relation to the business of the Chemical Foundation, by the Alien Property Custodian; am I right in that?

A. Yes.

RDQ. 185. Something was said to you about the price to be paid. There was no price mentioned in your order you observe that?

A. Yes.

RDQ. 186. Was the question of price really considered in connection with the matter; was it not the question of promoting, if I may use that word, the American industry, by the use of these patents?

A. Well, it was an arbitrary price.

RDQ. 187. Yes?

A. But I do not know that we considered the values of the patents as a whole. In other words,

whether you take what they could have sold them for at auction, because that is what they desired to avoid.

RDQ. 188. As a matter of fact you did not know what the patents and trade-marks were, so you could not consider their value?

A. Well, I had a general idea what they covered. That is, I knew there were certain processes and—

RDQ. 189. Your real object then, in making the sale under the terms prescribed in your order was to promote the development of this industry, dyes and chemical industry, through the use of these patents to the extent they could be used; is that true?

A. That is one of them.

RDQ. 190. As a matter of fact wasn't that the real controlling purpose in the matter?

A. No, I do not think it was the only one. As I recall it it was the policy that had been pursued in connection with these valuable German patents. In other words, turning them over to the Government or semi-Government agencies—not necessarily for the benefit of those industries, but to be used in this country.

RDQ. 191. You said you had not seen the charter of the Chemical Foundation. You regarded it as a semi-Government agency?

A. Yes.

RDQ. 192. And you understood from the report and statements from Mr. Palmer that it was a semi-Government agency, or would be, did you?

A. Well, I read the report. I assumed that it was not a money-making organization.

RDQ. 193. Of course, the thing might not be a money-making institution; for instance, a hospital.

A. Well, of course it was not a semi-Government, because after all there is no such thing as a semi-Government, strictly speaking.

RDQ. 194. Yes.

A. But of course it was created by Government officers with the knowledge of the Executive for a specific purpose. To that extent it was semi-official. Of course, that is a loose expression on my part. I used it.

RDQ. 195. You said it was created by Government officials with the knowledge of the Executive. The President had only returned the day before, had he not?

A. No, but I think the—yes, that is true.

RDQ. 196. And you stated this morning that he was so engaged that he could not consider this matter, which was the reason why you signed this order?

A. Yes, but I did not necessarily mean the President as the Executive, of course.

RDQ. 197. You stated in this order as the first reason that the trade-marks and similar rights can not be sold to the best advantage at public sale after public or other advertisement. Mr. Palmer did not in his letter but did he in his conversation with you state any reason upon which you based that statement?

A. I recall that was one question I usually asked, why it could not be sold at public sale.

RDQ. 198. What was the reason stated, if you recall?

A. As I recall, the reason stated was that these might be bid in by individuals who would hold them, not operate them, and defeat the very purpose that the Alien Property Custodian had in mind, and also fall into the hands of people who would use them purely for speculative purposes.

RDQ. 198-a. Well, was it not stated to you, as indicated in your order—reading it; you are familiar with it—that these patents and their control of importations were vital to American industry? In fact Mr. Palmer in his letter, if you will remember, states

that the ownership of these patents by Americans was vital to American industry.

A. Yes.

RDQ. 199. Was that made clear to you, how they were vital to American industry?

A. Well, I had that experience in 1915 and 1916 when the patents were held here and they were not manufacturing here, but the existence of the patents prevented the bringing in of Swiss and French dyes.

RDQ. 200. The existence of the patents here prohibited the bringing in of Swiss and French dyes?

A. The ownership by the Germans of the patents here, prohibited the Swiss and French dyes being brought in, because they were in infringement of the German patents which were not being operated.

RDQ. 201. To get back to the question, if Mr. Palmer stated that is the reason why he thought they were vital to American industry?

A. I could not recall that.

RDQ. 202. You could not recall?

A. No.

RDQ. 203. In this third paragraph of the reasons, stated in your order, it recites as follows: "The public interest will be best served by a wide use of the inventions covered by said letters patent and similar rights and such wide use can be most readily promoted by the licenses which the said The Chemical Foundation, Inc., is by its charter obligated to grant."

Mr. Polk, as you have stated it, you had never seen the Charter, and I assume you made that statement in the order upon the statement presented by Mr. Palmer?

A. Yes.

RDQ. 204. You personally had no knowledge as to the character of licenses which the Chemical Foundation was authorized or required to grant by its char-

ter except such as was represented to you in Mr. Palmer's report, his statement and letter?

A. Entirely his statement and letter, yes.

RDQ. 205. Did you know at the time that you signed this order or were you advised, as to who were to be the stockholders of the Chemical Foundation, Incorporated?

A. I can not be sure that I was told the names of all the individuals. I was told they were to be large users of the patents.

RDQ. 206. You mean large interests?

A. I meant to say large interests, chemical and dye interests.

RDQ. 207. Would own the stock?

A. Would own the stock.

RDQ. 208. Did you ever talk to any member of the Advisory Committee? You know to what committee I refer?

A. Yes.

RDQ. 209. Before you signed this order on this subject?

A. No.

MR. KRESEL: You mean the Advisory Sales Committee?

MR. ANDERSON: I refer to the Advisory Sales Committee.

THE WITNESS: I so understood it.

RDQ. 210. That is the committee you mentioned this morning as knowing three members of it?

A. Yes.

RDQ. 211. You stated in your answer to a question by Mr. Kresel that you were informed at the time you signed this order that the Chemical Foundation was obligated to give free licenses for the use of these patents, trademarks, etc., to the United States. Was that true?

A. Yes.

RDQ. 212. Was it your understanding or was the information given to you to the effect that the Chemical Foundation would give to the United States free and unrestricted licenses for the use of these patents, non-exclusive, of course?

A. That was my understanding.

RDQ. 213. Can you recall whether that question was specifically discussed between you and Mr. Palmer?

A. There was no discussion on it. I remember up in regard to other patents that had been assigned that statement was made because we had the question to the Army and Navy.

RDQ. 214. That statement was made to you by Mr. Palmer?

A. Yes, that is my recollection.

RDQ. 215. You stated, Mr. Polk, I think that you made the statement to the President, in the few days that he was in Washington, that you had signed this order, or these orders rather?

A. I stated to him merely as a matter of information that I had signed two or three, I have forgotten the number now, of those Alien Property Custodian orders, although he was in the city at the time.

RDQ. 216. You did not state the character of them?

A. I did not go into any detail at all.

RDQ. 217. The President was overwhelmed, I suppose, during the few days he was there, by Congressional duties and you could not discuss things of that kind?

A. No. I did not attempt to discuss them.

RDQ. 218. You stated in your cross-examination that the meaning of your statement in your Executive order, was to the effect that the sale of these properties at private sale was better, that a public sale

would give to individuals the control of the American market through the monopoly which the patents gave and thus create the same situation as there was before, except that the monopoly would be in the hands of American interests. Did I understand you correctly? I have that note there.

A. I think that is substantially correct.

RDQ. 219. And was that condition represented to you by Mr. Palmer as a reason why the private sale should be made?

A. I cannot be sure of that, Colonel, whether we discussed that feature of it or not. I remember that was in my mind.

RDQ. 220. That was in your mind and actuated you attitude. You said something about discussing this matter of the dye industry with former Secretary of Commerce Mr. Redfield. Was that at the time that you signed these orders or at a subsequent time, or about when?

A. That was in 1915 and 1916.

RDQ. 221. That was back in 1915 and '16?

A. I do not recall any discussion with him at that time at all.

RDQ. 222. That was before we went into the war?

A. That was before we went into the war. That was on the general question of importation of dyes and chemicals.

RDQ. 223. As a matter of fact, you do not recall discussing this matter with anyone except with Mr. Palmer and possibly with a representative of the Alien Property Custodian who brought you this order at the time you signed it, do you?

A. Not at the time I signed it, no.

RDQ. 224. Were you told, Mr. Polk, that there was any understanding or arrangement between the

Alien Property Custodian and the Federal Trade Commission and the President with respect to the seizure of enemy owned patents and the disposition thereof or limitations upon the seizure and sale?

A. I knew there had been a discussion on that subject.

RDQ. 225. You did not know what the arrangement was?

A. I can not testify now that I did. Of course, I have seen the order. That may refresh my recollection. I do not think I could testify that I really knew at the time the exact contents of that order.

RDQ. 226. I do not mean the order.

A. I thought you were referring to that order of December.

RDQ. 227. No, I am just speaking of whether you were advised of any arrangement other than that order between the Alien Property Custodian and the Federal Trade Commission or any arrangement or agreement with the President as to the seizure or sale?

A. Not other than the order of December.

RDQ. 228. Other than the contents of the order of December, that was your full information on that subject?

A. As I recall it, yes.

RDQ. 229. I understood you to testify—and in asking this question I would ask the Court to understand that I do not waive my objection to the question—that the policy of building up the dye industry was the great factor in this transaction. Possibly I do not use your exact language. Did I understand you correctly?

A. It was a factor. I do not think I said "the great factor." I think I said "a factor."

RDQ. 230. Is it or is it not a fact that you and Mr. Palmer in your conference considered the effect

upon the dye industry as the one object in view, as indicated in his report that you read?

A. I do not think that was the only object, Colonel. I remember that was an object. Of course, it was a question not only of building up our own industry but it was also putting in use—giving the American people the use of these patents. Of course, you could not do one without the other. Those were two of the factors.

RDQ. 231. Those two were the controlling factors in the situation?

A. Undoubtedly, yes.

THE COURT: May I have the question and answer repeated?

(Question No. 231 and answer repeated).

A. (Continued) Those were two of the factors.

THE COURT: You were both talking at the same time and I wanted to make sure that Mr. Polk understood you.

(Question No. 231 repeated).

A. Those were two of the factors.

RDQ 232. In view of your statement this morning that the policy was to build up the dye industry, and in connection with that you say you signed this order, and in view of the statements in Mr. Palmer's report as to the urgency of that and the vital necessity to the dye industry of these patents, wouldn't you say that that was the controlling factor in the sale of these patents, in the method in which it was made?

A. I do not want to seem to be avoiding your question.

RDQ. 233. I understand. I know you would not.

A. They were two, of course, very important factors in it. Of course, there were other factors but undoubtedly those were the two important factors.

I do not know that they were controlling factors, but they were two very important factors.

RDQ. 234. You stated this morning in your cross-examination that the ownership of these patents might be used to prevent the importation of dyes from England or Switzerland or France and that they had been used by the Germans to prevent the importation of such dyes prior to the war. Did I understand you correctly?

A. So I understood, yes.

RDQ. 235. From your familiarity with the situation, which you indicated in a prior question, can you state whether the use of these patents had prevented the importation of Swiss and English dyes prior to the war?

MR. KRESEL: You do not mean the use of these dyes. You mean the use of these patents.

RDQ. 235. (Continuing) The use of these patents, copyrights, trademarks, or whatever they were?

A. I can cite an instance where I was told that it had prevented. The question came up in regard to certain —

RDQ. 236. If it was hearsay, I think I would rather not go into it.

A. It is not hearsay. It came to the Department in this way. An application was being made to bring in German dyes. There was an embargo and they could not be brought in. The suggestion was then made that they be brought from Switzerland and the statement made that they could not be brought from Switzerland because those Swiss processes would be a violation of certain patents in this country which would not then be operative.

RDQ. 237. You mean German patents?

A. German patents.

RDQ. 238. Do you know whether those patents were included in the list thus sold?

A. That I do not know.

RDQ. 239. Do you recall whether Mr. Palmer stated to you at the time that you were asked to sign this order, in the conference to which you have referred, that the ownership of these patents by private interests would have the effect of controlling the importation of dyes affected thereby?

A. I do not recall he stated that to me, Colonel.

RDQ. 240. Do you recall whether that is stated in his report?

A. No, I am not sure enough to state. If you will let me have the report, I will tell you.

RDQ. 241. No. I just wanted to know whether you remembered it?

A. I do not know that—

RDQ. 242. Were you told, Mr. Polk, that the dye and chemical industry were all interested in the Chemical Foundation, and therefore that there would be no bidders outside of the Chemical Foundation if a public sale were made?

A. I do not know. I do not recall that statement.

MR. ANDERSON: I think that is all as far as I wish to examine the witness.

MR. KRESEL: That is all, Mr. Polk.

THE COURT: Now, Mr. Polk will not be needed further under the subpoena.

MR. KRESEL: No, your Honor.

MR. ANDERSON: As far as we are concerned he can be discharged from the subpœna.

In the event we should want to recall you for anything, I have no doubt you will come back upon request?

THE WITNESS: All right.

(Witness excused).

MR. ANDERSON: I call Mr. Harry S. Brown.

HARRY S. BROWN.

HARRY S. BROWN, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

MR. ANDERSON: I would like to state on the record for your Honor's convenience in reading the record, as Mr. Brown's testimony will relate to a matter of the accounts which has not been reached, on account of his personal position, I have agreed to put him on the stand out of the order, with your Honor's permission. That statement is merely to enable you to apply the evidence when you come to the record, sir.

Q. 1. Please state your name, your present place of residence and occupation?

A. Harry S. Brown, New York City; statistician and secretary.

Q. 2. Were you at any time connected with the office of Alien Property Custodian at Washington?

A. Yes, sir.

Q. 3. State in what capacity and for what period, the time that you began and the time that your connection ended?

A. I was an assistant to the Chief of the Division of Accounts from the fall of 1917, shortly after the Custodian's office opened, until February 19. I then became Chief of the Division and was there until May, 1922.

Q. 4. During the period from February, 1919, down to the time you left in 1922, you were Chief of the Division of Accounts?

A. That is right.

Q. 5. In that capacity you had charge of the